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THE LAST SUPPLEMENTARY REPORT

OF

**JUSTICE K. N. SAIKIA COMMISSION OF INQUIRY
ON THE LAST GROUP OF TEN CASES**

(SUBMITTED TO GOVERNMENT OF ASSAM ON 07.8.2007)

K. N. Saikia

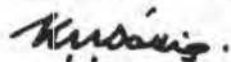
HINDWORD

When the Commission of Inquiry was accepted, its scope was expected to be somewhat lesser than what it ultimately amounted to. This was because of the nature of the subject-matter of Inquiry. The first was to ascertain what happened, and then who caused it. Because of secret nature of the killings, it was expected that broader was the sample, sounder would be the conclusions. The cases from different districts had also to be added. The inclusion of similar cases happening during the same period in the inquiry by the subsequent Notification was, therefore, a right decision of the Govt. of Assam, from this angle. Consequently total 35 cases could be inquired into by the Commission with more confidence.

The Report has been submitted in four volumes. It has two Parts. Part I is Introductory. The paragraphs of this Part are to be found in all the volumes, but those are consecutively numbered, so that they constitute a complete Part I. Part 2, also in the four volumes, contains the individual cases, and those are consecutively numbered, so that those could constitute the Part 2 of the Report.

Rejecting an application for fractured stay of its proceedings, the Commission has made it clear that it is only a fact finding body and is neither a civil nor a criminal Court, and there is neither a lis nor a charge before it..

Without prejudice to what has been said in the Report, the Commission feels that the Sulfas/Ulfas were from the Higher Secondary and lower levels, with uncertain future, and were children of the soil, and may not be judged by matured standards; and that the Police Organisation in the State appeared to have been somewhat misunderstood and misused at that relevant time.



(K.N.Saikia).
Commission of
Inquiry

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By Notification No.PLA 331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No.331/2005 dated 22.8.2005, the Governor of Assam was pleased to order that this Commission of Inquiry shall inquire into any other incidents of killings under similar circumstances which occurred during the period from January 1998 to 2001. This fourth and last group of ten cases are squarely covered by the said Notification, these having been cases of secret killings which occurred during the period prescribed thereby. The Commission has, therefore, decided to inquire into these cases; with intimation to the State Government of Assam, and submit this Last Supplementary Report within the period prescribed thereby, for consideration and necessary action.. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference and relevant matters, with recommendations, if any, namely:

“(a) Circumstances, in each case, leading to the killing of its victim(s).

(b) Identity of the killer(s) and accomplice(s), if any.

(c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing.

(d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)

(e) To make recommendations to prevent recurrence of such killing(s)

(f) Any other matter related to or relevant to the purpose of this inquiry;”

The Commission was ably assisted by Dr.Y.K.Phukan, Sr.Advocate and Shri Diganta Gogoi, Advocate, as Senior and Junior counsel for the Commission, respectively; and Shri P.K.Musahari, Senior Govt. Advocate, Assam, and Shri.Dhanesh Das, Junior Govt. Advocate and Additional Public Prosecutor, Assam.

The Commission's office was efficiently functioning with Smti Gima Rekha Bhuyan, A.C.S. as its Secretary and Shri K.P.Dahotia as the Deputy Registrar..Shri Mridul Saikia as Assistant/ Stenographer and the Govt.Stenographers rendered good service.

PART I. -INTRODUCTORY

30. Coercive Fund Collection by State through Instrumentalities and Sulfas.

Since the middle of 1999, in some of the cases, Ministry level activities towards fund collection through State instrumentalities and some Sulfas have been evident. The *modus operandi* seemed to have been to collect some contributions by some entrusted collectors for transmission upwards, to determined levels. This idea imaged in the following cases:

(a) In some Goalpara cases where the victims were somewhat successful businessmen, contractors and shopkeepers. In analysing evidence, some amount of demand having been there, and non-payment thereof being followed by kidnappings/killings were evident.

(b) In one Guwahati (Bharalumukh) case, which was dropped by its applicant, (therefore not inquired into by the Commission) one Sulfa, otherwise promising business entrepreneur, was killed, allegedly by his own P.S.O., and it was *inter alia*, stated on oath in the application.

"Around two months before the liquidation, my husband had divulgedthat Shri Prafulla Kumar Mahanta, the then Chief Minister of Assam, had one day summoned him and asked for Rs.ten lakhs to be given by him personally and another Rs.ninety lakhs from his other SULFA colleagues. Stunned at such requisition, my husband humbly expressed his inability to give or collect such huge funds....We suspect a linkage of his murder with this as the organised murder was committed not too long thereafter".

It is to be noted that the applicant having desired, and the case being accordingly dropped, the Commission did not have the opportunity to proceed to inquire into this case, which was already returned in F.R by police, and, may have deserved to be revived and reinvestigated.

(c) In a Jorhat case the evidence showed that some SULFA boys came and, sending the wife of the scrap dealer, talked something to the husband, beyond the hearing of the wife, who, however, heard the last words asking him to think over the matter within four days allowed to him. On the fifth night he was kidnapped, and in the process, the black face cover of one of the kidnappers accidentally dropped, and the wife recognised him to be no other than a constable of the local outpost who used to come to their house with the I/C of the outpost to collect surreptitious monthly fee/share.

It is to be noted that in this case while one Sulfa has categorically denied his involvement, several others have failed to respond to Commission's notices under section 8B of the Act.

(d) In a Dudhnoi case there is evidence to the effect that the local Sulfas used to collect shares from the sale proceeds of the local Furniture dealers and when the dealers resisted by forming an Association of furniture dealers, its Secretary was kidnapped and he has not been seen or heard of since then. In two other Goalpara cases, one contractor, and the other a businessman, were shot dead, one in front of his house and the other's dead body was found floating under a culvert away from his place of work. Evidence indicated something having been demanded of them earlier.

(e) In a Guwahati Paltanbazaar case, a promising young entrepreneur, failing to complete his Engineering course for want of funds resorted to distance education and started petty businesses like a Tent house and a PCO for some time, supplementing the

income of his retired father. Evidence showed that there was some sort of demand which he failed to meet. One of the kidnapper searching an almirah found some cash which he pocketed, and at this one of his colleague kidnapper asked him whether he was sent for taking the money or the man. The boy was kidnapped and he has not been seen or heard of by those who would naturally have heard of him, had he been alive. The O.C. of the P.S., when asked to interpret the statement, namely, "whether he was sent to take the man or the money," said, it might be by Sulfas or some other police officer of some other branch, but not he himself. Apart from being a very senior officer, he appeared to be having a religious bent of mind.

(f) In a Nalbari case where a Saw Mill owner was kidnapped, evidence indicated that the promising business man, in ascent, started a Saw Mill of moderate capacity. However, may be, because of regulation of timber felling by the Supreme Court, and clandestine demand for profit sharing, the police and forest officials frequented the Mill premises, and police, in collaboration with trusted SULFAs were reasonably suspected to have been involved in kidnapping and disappearance of the esteemed saw mill owner, who has not been seen or heard of any more. The other hypotheses, of business rivalry and family discord, were found not reasonable, though a large number of witnesses were examined in the case.

The *modus operandi* in all the above cases were more or less the same as in other Ulfocide cases under inquiry.

On the basis of the above evidence, the Commission considers it reasonable to conclude that from the middle of 1999, there had been a coercive fund raising drive through State instrumentalities and trusted Sulfas; and many a promising young entrepreneurs failing to meet the demands, fell victims to secret killers in the process.

Throughout the evidence, each and every one of the Sulfas appearing in response to section 8B notices claimed to have set up stable business establishments. It is good of them to have been established in life. Not that they could not have other sources of funds, but that some element of Sulfa collections might have contributed to the same. Even so, the society may not covet them on that account in the interest of peace and tranquility in the society, so long as no criminal element surfaces therefrom.

31. The Banned Outfits and the Constitutional Rights. This topic is being discussed in the interest of preventing recurrence of ruthless destruction of promising young persons of the State in the perennial process of controlling insurgency and disturbance. The fact that one Indian citizen has joined any banned Indian outfit does not, *ipso facto*, result in his loss of Indian citizenship or in his forfeiture of his fundamental right to life and personal liberty. Nobody in India, therefore, has the right to shoot him/her down at sight. The Armed forces of the Union, and the other para military forces of the Union, deployed in the State, in aid of civil power, have no right to shoot down any banned outfit member of the State who is a citizen of India, only for being a member of a banned outfit. The situation may be different when the outfit is a foreign one, but operating in any State of India. The Armed forces Special Powers Act has authorised actions within the prescribed conditions, but not otherwise. For example, Section 3 of the Armed Forces Special Powers Act provides for declaration of areas to be disturbed areas. Under section 3. If in relation to any State or Union territory to which this Act extends, the Governor of that State or the Administrator of that union territory, or the Central Government in either case, if of the opinion that the whole or any part of

that State or Union territory, as the case may be, is in such a disturbed or dangerous condition that the use of the armed forces in aid of civil power is necessary, the Governor of that State or the Administrator of that Union territory or the Central Government, as the case may be, may by notification in the official Gazette declare the whole or any part of such State or Union territory to be a disturbed area..

Section 4 provides Special Powers of the Armed Forces:- Any commissioned officer, warrant officer or non-commissioned officer or any other person of equivalent rank, in the armed forces may, in a disturbed area:-

(a) if he is of opinion that it is necessary so to do, for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force, in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or things capable of being used as weapons or of firearms, ammunition or explosive substances; (This section was once stayed by Gauhati High Court as unreasonable and violative of fundamental rights)

(b) If he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made, or are attempted to be made, or any structure used as any training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence; (c) arrest any person without warrant who has committed an offence or against whom reasonable suspicion exists that he has committed or is about to commit a cognisable offence, or may use such force as may be necessary to effect the arrest; (d) enter and search without warrant any premises to make any such arrest as aforesaid, or to recover any person believed to be wrongfully restrained or confined, or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept on such premises, and may for that purpose, use such force as may be necessary

In the claimed encounter cases under inquiry, the forces never even mentioned that they fired upon, 'after giving due warning as was considered necessary', or 'used such force as was necessary to effect arrest', or even under which provision of the laws the encounter was resorted to. Being oblivious of these precautions has been unfortunate.

Another question is the source of the information that a person was a member of the ULFA, or any other banned outfit. Throughout the inquiry no police officer could say for certain the source of their information. It has been said that there were two sources, namely, engaged source, and the media. None mentioned the outfit itself being the source. Neither of the above two can be regarded as authentic original source. The sources are engaged by police themselves and are undisclosed. How then such a vital information from them could be taken as evidence? Media as a source may, except in confirmed cases, be unoriginal and unverified. How can the police or the army be allowed to act on basis of such unverified information or even mere supposition, where human lives are at stake? Are not all such killings on unverified information, proved to be untrue, liable to be treated as cold-blooded murders? Can the army or the police be allowed to garb a non-ULFA and non-extremist youth as ULFA, or any other extremist, and on that basis, kill him/her in cold blood? Law will never give such a licence to anyone. All such killings must be judged according to law. Surprisingly, there has been evidence before the Commission that in those days killings were expected to be the

credit marks for promotion and even for better postings in service. Ambitious officers and men, it seemed, rushed to earn such credits to surpass others in being favourites of those who mattered. Posthumous placement of arms and ammunition and ULFA-related papers would be of no help, rather make them liable for tampering with evidence. The most unfortunate factor was that selected Sulfas, who deserted their erstwhile colleagues, and were, otherwise, struggling to have a footing in life, were utilised in the process. The Constitution of India granted the fundamental rights to one and all in India..

The Unlawful Activities (Prevention) Act, 1967, in section 2 defines:

(a) "association" means any combination or body of individuals.
 (b) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part.

(d) "secession of a part of the territory of India from the Union" includes the assertion of any claim to determine whether such part will remain a part of the territory of India.

(f) "unlawful activity" in relation to an individual or an association means any action taken by such individual or association (whether by committing an act, or by words, either spoken or written,) or by sign or by visible representation or otherwise.-

(i) which is intended to support any claim, to bring about or any ground whatever, cession of a part of the territory of India, from the Union or which incites any individual or group of individuals to bring about such cession or secession;

(ii) which disclaims, questions, disrupts, or is intended to disrupt the sovereignty or territorial integrity of India.

(iii) "unlawful association" means any association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity.

Section 3 of the Act provides for declaration of an Association as unlawful by the Central Government. Section 4 provides for reference of the order to a Tribunal. None of the above provisions says that a member of an unlawful association may be shot at sight. Yet such allegations abound.

In the encounter cases under inquiry, the forces never even mentioned that they fired upon, 'after giving due warning as was considered necessary', or 'used such force as was necessary to effect arrest', or even under which of the laws the encounter fell.

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for better postings in service. Ambitious officers and men, it seemed, rushed to earn such credits to surpass others in being favourites of those who mattered. Posthumous placement of arms and ammunitions and ULFA-related papers would be of no help, rather make them liable for tampering with evidence. The most unfortunate factor appeared to be that selected Sulfas, who, having deserted their erstwhile colleagues, were otherwise struggling to have a footing in life, were utilised in the process.

The gravity of the offences under the Act has been determined by legislature. The security forces have no power under the Act to impose greater punishment than the prescribed ones under the Act. Chapter III of the Act deals with offences and penalties as under.

Section 10. Penalty for being members of an unlawful association.. Whoever is, and continues to be a member of an association declared unlawful by a notification issued under section 3 which has become effective under sub-section (8) of that section, or takes part in meetings of any unlawful association, contributes to, or receives, or solicits or receives contribution for the purpose of any such unlawful association, shall be punishable with imprisonment for a term which shall extend to two years, and shall also be liable to fine. Section 11 prescribes a penalty of imprisonment for a term which may extend to three years or with both for dealing with funds of an unlawful association. Section 12 prescribes a penalty of imprisonment for a term which may extend to one year and shall also be liable to fine, for contravention of an order made in respect of a notified place. .

Section 13 prescribes punishments for unlawful activities. (1) Whoever, (a) takes part in or commits, or (b) advocates, abets, advises or incites the commission of any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine. (2) Whoever in any way assists any unlawful activity, or any association declared unlawful under section 3, after the notification by which it has been so declared under sub-section (8) of that section, shall be punishable with imprisonment for a term which may extend to five years or with fine or with both. (3) Nothing in this section shall apply to any treaty, agreement, or convention entered into between the Government of India and the Government of any other country or to any negotiation therefor carried on by any person authorised in that behalf by the Government of India.

Under section 14 of the Act, notwithstanding the provisions in the Code of Criminal Procedure 1898, an offence under the Act shall be cognisable.

There can, therefore, be no doubt that maximum penalty prescribed under the Act, for an offence, is seven years with fine. There is nowhere a death penalty. This means that by being a member of an unlawful association and carrying on any unlawful activity, *ipso facto*, none will forfeit his right to life and liberty. In face of this, if any of the security forces or the deployed armed forces, in Assam, illegally shoot down any Indian citizen contrary to law, it may amount to cold-blooded murder under the Indian Penal code. The penal law of India has provided that, only after lawful trial, for crimes involving death penalty, can be pronounced by the Sessions Judge, but it is subject to confirmation by the High Court. From the confirming order, Criminal Appeal lies to the Supreme Court of India. There is also provision for Clemency petition to the President of India. The reason is that no Indian citizen can be killed by anyone in India without the sanction of law. In face of this, some of the reported killings of innocent and

unarmed citizens, often claiming fake encounters, by the Army, the para military forces, and the security forces, even without having definite proof of their being members of any unlawful association and of commission of any punishable activity thereunder, and of his/her commission of any offence under the unlawful association, without the authority of law, may amount to cold-blooded murder. Any plea of private defence has to be strictly construed under the law in the background of the tragic reality of the dead body and heart-rending wailings of widowed spouses, orphaned children, parents and relatives. If someone is found to have been at fault, he is to be punished according to law. No Indian citizen, even if an extremist, can be denied his/her Constitutional and fundamental rights to life and personal liberty without the sanction of law. There has never been, nor shall there ever be, any sanction of law for fake or false encounters in any circumstances under the Constitution of the Republic of India. Needless to say that the same law applies to all killings of innocent persons by extremist elements, and or any others, whatever be their excuses. The authority has to examine all the cases of killings under this Act, or otherwise, in violation of the victims' fundamental right to life and personal liberty granted by the Constitution of India and the Human Rights under the United Nations declarations.

It is also somewhat surprising that the concerned forces seem to have been oblivious of that even shooting a person may be modulated according to needs, purposes and expediencies of the situations. Shooting to kill is different from shooting to maim or disable, and also from demobilising or tranquilising. Everybody's God-given life is most precious to himself, to his family and also to the contemporary society. History of Assam recorded that a soldier would take as long as 18 years to make. So also an insurgent youth; arresting or capturing him alive can never be detrimental to the society's interest. His ruthless destruction would only encourage and facilitate the enemies of the country. Why not make the use of rubber bullets and tranquilisers compulsory before shooting to maim or kill, as a measure of modulation of punishments to the misguided citizens of the Republic of India within the territory of India? There is hardly any prowess for the army deployed in aid of civil power of a State, and for that matter security forces of the State in massacring our own young citizens, nay, our own young children. Remember, brutalities generate more brutalities and hostility breeds more hostility. Therefore, Legislature may provide for shooting tranquilisers, rubber bullets, shooting below the knees, below the belt and shooting rubber bullets and tranquilisers to capture the insurgent rather than to kill instantly. At the inquiry it transpired that many of the armed personnel appeared to be unconcerned with, or even unaware of, such modulation of shootings, differences in effects, and purposes. True it may not always be possible to make any such cool calculations in face of aggressive and equipped adversaries, but in many an occasion it may be practicable to be so considerate. It should also be remembered that the insurgents fire upon early as they are sure that the army/police will kill them. When they will know that they may have a chance to survive, their reaction will also be different. Kill the youth and let his tragic dead body lie, may see such a body of someone of your own, before you die.

32. Why not be heedful to the Buddhist Incarnate The Great Dalai Lama: "It is clear and convincing that violence always creates more troubles. It creates negative feelings in the minds of more people, creates more pain, more hatred, and more anger. Result? More violence". and always act for *bahujana hitaya, bahujana sukhaya*? There is no socio-political dispute incapable of being solved by mutual discussion, introspection and further discussions. till solution. There is hardly any military prowess in killing our own citizens, however misguided they might be. It is fundamentally wrong to call it a cross-border terrorism, as someone may erroneously say so, in aggrandisement..

33. The SULFA Organisation. From depositions before the Commission it is learnt that the idea of, and the inducement for surrender, by Ulfas originated during the Congress Government of Assam headed by the then Hon'ble Chief Minister Shri Hiteswar Saikia.. In fact, its birth is traced to an Indian Union Cabinet's decision in 1992, when Hon'ble Shri P.V. Narasimha Rao was the Prime Minister. There was also a rehabilitation scheme, including financial accommodation of Rs.2,00,000 (Rupees two lakh) each, on stated terms. A prominent SULFA deposed that in 1992 the then ULFA General Secretary himself advised about 200 Ulfas, including the deponent, to surrender, and that while 200 Ulfas, as advised by him, surrendered at a District Headquarter, the General Secretary himself did not do so. Thereafter also number of ULFA members have been surrenderring from time to time, and some Ulfas have been jailed and some others have been killed, but the ULFA Organisation also is stated to be continuing with its own vigour. Media often reports that the ULFA have been making new recruits to their fold.

The surrendered ULFA members, popularly called SULFAs, perhaps, had before them both ideological and financial anxieties. On ideological plane, most of the Sulfas deposing before the Commission said that at that young and exuberent age, mostly at the Higher Secondary Classes students level, were attracted by two issues, namely, the foreigners issue and the sovereignty issue. According to some of them, the sovereignty issue was not there at the initial stage when they joined, but was accepted soon thereafter and has still been there. Both the issues remaining unsolved, and they having deserted their erstwhile colleagues in the organisation, the Sulfas, as it appears from their depositions, seem to have a psychological issue as well. This has been their relationship with their erstwhile colleagues whom they deserted and displeased. Here also some difference surfaces, One group say that till the killing of Sulfa Shri Tapan Dutta in 1998, there was no antagonism with the ULFA, but thereafter antagonism developed. The other group feel that the antagonism has been there since their surrender. They show that many Sulfas have since been killed by the ULFA. But, say the other grou, that all those killings were not for the ULFA-SULFA clash or conflict, many of them having been for business rivalry or personal animosity. It is, therefore, necessary to have an idea as to which element was prominent in those killings. Added to that is the apparent interest of some other forces, namely, the successor A.G.P. Government and the Unified Command Structure. From the depositions of the Police Officers, it appears that there developped a very high pressure from the succeeding Chief-cum Home Minister to bring back the ULFA members to the main stream of political process of the State. The Chief Minister got some appeals published in the organs of the Sahitya Sabhas and some other media for bringing the ULFA back to the

main stream. The Home Ministry, through the instrumentality of police structure emphasised and prioritised this objective. Then came the superstructure of the Unified Command Structure and the ubiquitous army and para military forces of the Union. The result was too many forces chasing too few Ulfas.

The efforts at organising the Sulfas, as it appears from the depositions, was not very promising. They set up what they called a "Jatiya Mahasabha" whereunder number of "Karmasalas" and workshops were held to spread the message of peace and non-violence. The depositions, however have not depicted any rosy picture of this organisation. Side by side, the Government efforts to rehabilitate the Sulfas resulted in setting up of a number of SULFA camps nearabout Police Reserves and Stations. Where available, some lands were also earmarked for cultivation by local Sulfas to supplement their livelihood. However, though originally well meant, in view of high pressure duty for reducing ULFA strength, the arms-trained Sulfas proved to be handy for the army and the police in the matter of reducing ULFA strength. by utilising the Sulfas' information and geographical knowledge, by the army and police. That naturally encouraged the Sulfas and resulted easy development of a tacit Police-Sulfa nexus, some of the arms-trained Sulfas also harbouring possible absorption in those forces on the basis of their services rendered. In the process, it is clear from the depositions of some officers that even the State and district police authorities started treating selected and trusted Sulfas rather intimately, and that resulted in a picture of equivalence between the police hierarchy with that of the Sulfas brandishing their arms publicly. Several such occasions were narrated with credible details before the Commission. There was the concomitant decision to redesignate the post of IGP (Law and Order) as IGP(Operations). This was in conformity with the State Scheme and design behind many an activities of the army-police-Sulfa nexus to the awe and wonder of the common man all around. At the same time, the State level controlling body of the Unified Command structure was not taken charge of by the then Chief Minister, but was allowed to be occupied by the Chief Secretary instead, who, though an able administrator, was not expected to have his finger on the political pulse of the State. Nor was he expected to issue any rejoinder to what was planned by the Chief Minister. There has been indication that somebody had decided to resort to ulfocidal secret killings by a new *modus operandi*, somewhat different from that of the ULFA. Ambitious Sulfas gradually fitted into being the striking arm or executioners of the State instrumentality. The traditional relationship and distance between the officers and the suspected accused gradually narrowed down to nil. The Jatiya Mahasabha, consequently, retired into oblivion. The District Police authorities naturally developed a protective attitude towards the Sulfas in their protected camps, and thus connivance of the Sulfa criminal incursions developed. The Youth and exuberance of the selected Sulfas rose to a new height, and the intelligent traditional investigative process for detection of crimes received a tinge from the newly developed police-Sulfa nexus bringing down the police ideals and attainments to all-time low level, and the common population started groaning under its excesses. The Ulfocide decision had the blessings of the Home Ministry and the army and police personnel while visiting Ulfa families made no secret of their design in forewarning the families that the consequences of their failure to bring back their wards to join the main stream would not be good for the family. The police-Sulfa or army-Sulfa nexus could not chastise the relatives during the day time, and hence night time had to be suitable. The police-Sulfa

nexus could not allow themselves to be recognised by the forewarned families, therefore faces had to be covered with black cloths. These have made the ultrafocidal secret killings to have been the most suitable *modus operandi* for the nexus secret killings. The two equipments, namely the sophisticated weapons and the speedy and silent vehicles were galore with the police structure and could easily be used at night. Three consequences followed, the investigations regarding the vehicles used were mere eye wash. Investigation as to the weapons used had also to be similarly a mockery. Rule was circulated that the sending of the arms and ammunitions to the Assam Police Battalion Armourer, who was no other than a policeman, would be sufficient. All the cases under inquiry had similar peculiarities.

34. The SULFA Headquarter. Concomitantly with the development of the Police-SULFA nexus, a headquarter for the SULFA was in the offing. The Usha Court Apartments, a five storied building, with 20 apartments, by the western side of the R.G. Barua Road, Guwahati, proved to be a contender for the same. Why it was christened as "Usha Court" was not deposed by any witness. In course of depositions in Basistha P.S. Case No. 58/99 and the Kshetri P.S. case No. 45/99 other particulars mentioned were that it has five floors, the ground floor itself being used as basement. On 7.3.99 there was an RPG (Rocket propelled grenade) attack on its 3rd floor, which hit the grill of the front room. That room was vacant on that day, it having been vacated by its occupant 3/4 days earlier. Another apartment was kept by its Builder and the remaining two were in occupation of one prominent SULFA who lived there with his family. He owned two pistols (One in the name of his wife) and two rifles of 12 and 30 bores, respectively. Another Sulfa resided in an apartment of the fourth floor. From other authentic records it was learnt that two more Sulfas also resided in the Usha Court apartments, one of the two was recently killed near Udesna Cinema, Guwahati. Soon after the aforesaid grenade attack, the then D.G.P. Shri P.V. Sawant, the I.G.P. (Operations) Shri G.M. Srivastava, the DIG Shri Dilip Bora, the S.P. (City) Shri Bhaskar Jyoti Mahanta, the Addl. S.P. (City) Shri P.K. Dutta, and a host of lower police officers visited the Usha Court, and from depositions it transpired that large number of civil-dressed armed persons surrounded the building brandishing their sophisticated arms. While the DGP himself could not say who were those armed persons, Shri Bhaskar Jyoti Mahanta, the then S.P. (City) told the awed and wondered crowd that some of them were police personnel in civil dress, and the others were Sulfas. Obviously some were from outside the Usha Court premises. The depositions also showed that some such armed persons brandishing their arms proceeded to their destination on several vehicles, without any obstruction from the police hierarchy present there. That gave the impression of it being the SULFA Headquarters. Thus, "*chatusburnang twoya shristang guna katma bibhagasca*" was clear. First was the declaration of the Disturbed area, second was the banning of ULFA, third was the creation of SULFA, and fourth, the creation of the Unified Command Structure, and getting into the quagmire of killings and counter-killings. The solution lies in reversing the process. Unbind the same way you had to bind. Restore normalcy and normalise the disturbed area, disband the ULFA, dismantle the Unified Command Structure, and bring the Sulfas and disbanded Ulfas into the main stream, and engage them in socio-politically and economically productive activities and usher in peace and tranquility in the society.

In course of depositions in the same Basistha and Kshetri P.S. cases witness Shri Bhugeshwar Teron, then Secretary, Karbi Students Union deposed that he was kidnapped

early in the morning of 8.3.99 telling him that he was being taken to the Geetanagar P.S., but after he was taken into the vehicle his eyes and mouth were tied, though at first he could guess which direction he was taken, but after the vehicle took several rounds at the same place, he could not imagine his destination, however as it took only 15 minutes, he thought it could be to the Usha Court, where he was made to take about 25 tiny steps downstairs to what appeared to him to be a basement. There he was tortured, asked the whereabouts of Shri Putul Teron @ Babul Ingti, Shri Nirmal Boro @ Tirtha Gogoi and several other Karbi and Boro leaders. They took out his pocket diary and contacted every address they found in it. He was threatened with a pistol putting its barrel into his mouth, untieing it for that purpose, then with an A.K. 47 rifle putting its barrel against his forehead, and then offering drinks and eatables and, next morning, left him at the gate of his hostel. When his fellow students enquired at the Geetanagar P.S., they denied that they ordered to bring him there the previous day. This indicated that the kidnappers were interested in the whereabouts of those tribal leaders.

In connection with Nalbari P.S. Case No. 175/99 the kidnapped youth being Shri Khagen Das, his mother Smti Reba Das deposed that in the same vehicle on its way back another youth, Ajay Talukdar, was also kidnapped by the same miscreants and both of them were taken to the Usha Court and were confined and tortured in two different rooms, and subsequently Shri Ajay Talukdar was released. The Commission examined Shri Ajay Talukdar and found the allegation about him to have been true. In connection with the Nalbari P.S. Case No 355/2000 the I.O. proceeded to the Usha Court to interrogate one Dibakar Deka who was then a resident of the Usha Court and he was summoned to the Geetanagar P.S. by its O.C. when the Nalbari I.O. examined him. In the kidnapping case of Shri Hemen Kalita of Birubari, it was alleged that he was confined and in the Usha Court. But this was not verified by the Commission..

Thus the Usha Court apartments have been often mentioned before the Commission. However Shri Jugal Kishore Mahanta, a resident of Usha Court, deposed that Shri Dibakar Deka had never been a resident of Usha Court and that Rinku Choudhury (since deceased) came to stay there long after the grenade attack. Let not the Usha Court Apartments suffer for it being so used. If required, Govt. itself may help it in this regard...

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PART 2. INDIVIDUAL CASES

(26)

SHRI HAREN TERON, BARHANI TERON & BIPUL TERON KILLING CASE.

Basistha P.S. Case No. 58/99

Date of Occurrence 8.3.99

By this Commission's order dated 5.11.2006, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No.PLA 331/2005/1 dated 22.8.1995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry. By virtue of the aforesaid Notifications, the

Commission is to inquire into, in each case, the following terms of reference, and any other related and relevant matters with recommendations, if any, namely:-

- (a) Circumstances, in each case, leading to the killing of its victim(s).
- (b) Identity of the killer(s) and accomplice(s), if any.
- (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
- (e) To make recommendation to prevent recurrence of such killing(s)
- (f) Any other matter related to or relevant to the purpose of this inquiry

(A) Circumstances leading to killing of Haren Teron, Barhani Teron and Bipul Teron

The Basistha P.S. G.D. Entry No.350 dated 8.3.99 was: "Now the people of Lakhra Thapana village Shri Mahendra Ingti, Shri Bipin Ingti, Shri Bhupen Sarma, and Shri Jogen Raha reported to the effect that in the Thapana Chuk of Saru Motai village, that night, at about 2.10.A.M. some Mahendra appearing at the P.S. reports that entering the house of ULFA Shri Putul Teron @ Shri Babul Ingti's at about 2:30 A.M., 10/12 boys shot dead Shri Haren Teron (65 years), Smti Barhani Teron (50 years), and Shri Bipul Teron (20 years), and left. Later in the morning, on 8.3.99 one Shri Niran Teron, son of Haren Teron of Haokuchi, Guwahati, -34, submitted an F.I.R addressed to the O.C. Basistha P.S. saying that unknown assailants coming in a body, shot dead their family members Shri Haren Teron (65 years), his wife Smti Barhani Teron (50 years) and their son Shri Bipul Teron (20 years) and left. The neighbours were terrified at the firing sounds But they did not have the courage to come out. After the assailants had left, the villagers came and saw what happened. His young sister Smti Mamoni Teron was saved being asleep unseen. On the FIR the Basistha P.S. case No. 58/99 was taken...

Killing in law amounts to accelerating the victim's death. Since we are all fated to die at some time, every instance of killing is an instance of accelerating death, and even if death is accelerated by as little as five minutes, it is still a criminal homicide..So it is no defence to a person who has killed a person to say that he was already nearing death.. In this case Shri Haren Teron was 65 years old, and Smti Barhani Teron was 50 years old.

The post-mortem report shows: On dead body of Haren Teron.

1. Bullet entry wound surrounded by abrasion having regular inverted margin 0.8 cm diameter x left arm deep present on back of left forearm the bullet passed through and came out through neck
2. Exit wound 2 cm x 1 cm with lacerated everted margin present on front of left elbow 1 cm inner to midline;
3. Bullet entry wound surrounded by abrasion color measuring 0.8 cm diameter x left forearm deep present at 12 cms below the entry wound No.1. the bullet passed through the muscles and came out through exit wound.
4. Exit wound 1.5 cm x 1 cm size above the exit wound No. 2.
5. Bullet entry wound surrounded by abrasion color measuring 2 cm x 1.5 cm x chest cavity deep present at 6 cm below and outer to axillary line.
6. Bullet exit wound with lacerated everted margins 3.5 cm x 3 cm on the back 8 cms below the interior angle of right scapula and 7 cms right to midline

The death was due to shock and haemorrhage resulting from bullet injuries of heart and lungs. Injuries were ante mortem and caused by rifled weapons and homicidal in nature Time since death 12 to 24 hrs R.eport dated 10th March 1999

On dead body of Smti Barhani Teron. ...

1 One bullet injury wound present, size .8 cm x .8 cm on the right anterior axillary line 6 cm right from right nipple. Bullet passes through the chest cavity and comes out..

2. Bullet exit wound left side size 4 cm x 4 cm lacerated and everted margin, No legature mark present..

Death was due to shock and haemorrhage due to the antemortem injuries.

On the dead body of Bipul Teron

1, Bullet exit wound abrasion color and having irregular inverted margins 0.8 cm diameter x left arm present on back of left forearm below the tip. The bullet passes through the neck. No legature mark present.

2. Exit wound 2 cm x 1 cm size with lacerated everted margins in right of left elbow 1 cm inner to midline

3. Bullet entry wound surrounded by abrasion color measuring 0.8 cm diameter x left forearm deep present at 12 cms of the entry wound No. 1.

4. Exit wound 1.5 cm x 1 cm with everted margins present at 1.5 cm above the exit wound No.2

5. Bullet entry wound surrounded by abrasion color measuring 2 cm x 1.5 cm x chest.

6. Bullet exit wound with lacerated everted margins 3.5 cm x 3 cms size on the back 8 cm below the interior angle of right scapula and from right midline.

Death was due to shock and haemorrhage resulting from the bullet injuries which were antemortem.

Modi in his Medical Jurisprudence and Toxicology, Chap. xii under Injuries by mechanical violence, p 256, explaining perforating wounds said: "In the case of a punctured wound perforating a part of the body, there are two wounds, one of entry and the other of exit. The wound of entry is usually larger with inverted edges and the wound of exit is smaller and has everted edges. The edges of the entrance wound may be found everted when the weapon used is rough and rusty. A short barrelled rifle (less than 22 inches) is called a carbine..

Modi on firearm wounds says at P.263. The size of the entrance wound due to a bullet gives no direct measurements of the size of the bullet-because the perforation is made with the skin under tension. After the bullet passes through the skin tends to return to its former size and the margins of the wound contract when the range is short, the perforation or the entry hole is enlarged due to pressure of gases..

The injuries produced by the projectiles discharged from firearms may present the characteristics of lacerated wounds. but their appearances vary according to the nature of the projectiles, the velocity at which it was travelling at the moment of discharge and the angle at which it struck the part of the body struck. the size of the entrance wound due to a bullet gives no direct measurement of the size of the bullet- because the perforation is made with the skin under tension. After the bullet passes through, the skin tends to return to its normal size and the margins of the wound contracts, when the range is short, the perforation or the entry hole is enlarged due to pressure of gases..

(B) The identity of the killers, and their accomplices, if any

Accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, divides the accomplices (parties to a crime) into perpetrators and accessories. An accessory is one who excites helps the comion of an offence by the perpetrator. Perpetrator means exclusively the person who in law performs the offence. More precisely, the perpetrator is the person who. Being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. The killing of Shri Haren Teron, Barhani Teron and Bipul Teron was secret as to the killers and their accomplices, if any. The identity of the killers and their accomplices have to be determined on basis of the evidence on record. It is a developed principle of law that the accomplices are parties to the crime.. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who. being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous.. We discussed the meaning of "secret". In para 7 of the Introductory Part 1. Identification of the killers has to proceed on the basis of investigation and evidence.

H.W.V. Cox in his Medical Jurisprudence and Toxicology 7th ed, in part vii on: "The modern nitro-cellulose type propellants that are now far more commonly encountered. Medico-legal questions in relation to firearm injuries. The kind of firearm used is determined by the size, shape and the composition of the bullet and the examination of the cartridges that are used. A modern criminalistics laboratory with all the modern imaging facilities is a pre-requisite in modern investigations. Infra-red photography for examination of the clothing is a pre-requisit now a days. The furnitures and fixtures and the position of the weapons and the posture of the injured at the time of firing have to be considered. The victim's posture may have changed during the killing. In a rifled weapon wound the entrance wound is usually inverted and the and the exit wound is everted. However, the entrance wound may be everted if it is a close discharge, and the exit wound may not be everted, if there is firm support of the skin.. The calibre of a rifled weapon cannot certainly be deduced from inspection of the entrance wound. The most important differentiation is between those caused by smooth bored from those caused by rifled weapons. Contact and very close discharges produce burns, very close blackening of powder or oil and powder tattooing where black powders are used, of course not so much with smokeless propellants

VII that the type of weapon has great relevance to the nature of injury caused to a body and therefore to the interpretation of such injuris by the doctor

P.W. 1 Shri Lachit Bordoloi is the Chief adviser of the Manab Adhikar Suraksha Samity, hereinafter referred to as the 'MASS', a Human Rights organisation in Assam. At the relevant time he was its Secretary General. He was not an eye witness to the occurrence, but as the Secretary General of the MASS, on 8.3.99, early morning, he arrived at the place of occurrence, met the lone surviving daughter Smti Mamoni Teron, and the eldest son Shri Niran Teron, who was staying in a separate house Smti Mamoni Teron, then aged about 17 years exclusively said that she was sleeping under the quilt, but did not come out of fear though she heard the firing sounds and only when the firing sounds came to an end she came out and

seeing the condition of her parents and brother she shouted and in response the villagers came out. She thought that those who came were policemen. The witness attended the Sraddha ceremony where the people discussed that Babul Ingti and Nirmal Boro having been in charge of Guwahati, the Usha Court Sulfas may have thought the grenade attack to have been caused by them and consequently the Usha Court Sulfas may have killed the two family members in retaliation. According to him, Shri P.K. Dutta was present when Usha Court attack was made and also when the Usha Court Sulfas went out with arms and ammunitions in vehicles to their destination, which was the family of Haren Teron. Even public processions mentioned his name.; and that in return the State Government allowed the Sulfas to form mafias and syndicates in all products and places..

He also claims to have collected the relevant data on the killings and got those published locally and also sent those to other Human Rights network, including the United Nations Special Representative for Extra-Judicial executions at Geneva, Switzerland. The witness states that "It was also the news at that time that after the Usha Court incident Shri P.K.Dutta, the then Additional S.P.(City) visited the Usha Court and while he was still present there, the armed Sulfas proceeded in several vehicles with arms without any sort of obstruction from him" The witness expressed dismay as to why, despite the members of Ulfa families having been killed by secret killers why no protection was provided to the Ulfa family of Babul Ingti, and, according to him, that left no doubt that the whole action enjoyed the support of the Govt. of Assam headed by Shri Prafulla Kumar Mahanta. In his estimate round about 450 persons were killed in Assam in that stint, and that Shri Prafulla Kumar Mahanta, during his second term thought of his political survival through this sort of killings of ULFA family members so as to pressurise their ULFA wards to surrender and help perpetuation of his A.G.P. rule in the State. The witness also replied that the then N.D.A Govt at the centre was supporting Mr. Mahanta and the then Governor of Assam declined permission to C.B.I. to arrest Shri Prafulla Kumar Mahanta in the LOC scam.; and that imposition of the Unified Command Structure on Assam, despite wide spread public opposition, was with a view to support Shri Mahanta in those killings. According to the witness the secret killings were planned and designed by the trusted police officials for State Govt. which created a new post of I.G.P.(Operations) and the plan was executed by a group of trusted Sulfas who were armed and equipped by the police with sophisticated arms and police had hired vehicles, at different centres of the State, all acting in liaison. His evidence is that there were six persons residing in the Usha Court which was the meeting centre of SULFA members, in connection with secret killings, but he knew only Shri J.K. Mahanta among them. He believed that the rocket propelled grenade attack on Usha Court at about 7 P.M. on 7.3.99 was caused by police naming ULFA with a view to provoke the trusted Sulfas to retaliate against the ULFA family members and several such killings followed in quick succession, such as Haren Teron's family, Sukuri Bori's family and Dhaneswar Rabha's family. The witness published a press statement in the above line specifically mentioning the names of Shri G.M.Srivastava and Shri P.K.Dutta; and that neither the Govt nor the officers contradicted it.

P.W. 2. Shri Niran Ch. Teron, the eldest son of Haren Teron separated from his parents about three months prior to the incident. That night he was sleeping with his family in his house about 200 metres away from his parental house, At night they heard

some firing sounds which, they thought, were crackers to drive away wild elephants.. But at about 3.30 A.M. they heard some noise of people from the side of their old house and coming there he saw the bullet-wounded dead bodies of his parents and younger brother lying at the 'varendah, and some empty cartridges strewn around, and the discussion among the people present there was that the killing could be by none else than the secret killers. Seeing all these, his mental condition was such that he forgot even to lodge an FIR. They stayed there till about 9./ 9.30 A.M. by which time police from Basistha P.S, about 5 k.ms away, arrived and were seen picking the empty bullets from the place. Police asked him some questions which he replied About seven villagers accompanied the police and the dead bodies to the Mahendra Mohan Choudhury hospital, Panbazar, Guwahati. Niran Teron's younger brother Shri Putul Teron @ Babul Ingty was in the ULFA, but he was not at home. Witness said that even after series of killings of ULFA family members in the State, their family was given no protection and that made the complicity of police in the killing. No compensatory /ex gratia payment was made to them by the then Government of Assam. Shri Niran Teron has been an employee of the Civil branch of the Defence Department Police and army frequented their house in search of Putul Teron and they used to take signature on blank paper and would take away with them.

P.W. 3 . Shri Jagadish Hazarika, was from the MASS and he corroborated P.W. 1 in all material particulars. When they visited the place of occurrence the policemen were already there and were seen picking up the empty cartridges. They learnt from the villagers that a marriage ceremony was going on in the village, and the people took the firing sounds as bursting of crackers, and that the miscreants asked the villagers to put off their lights and not to come out of their houses. The villagers lodged an FIR at the Basistha P.S. at about 5 A.M, and police came there at 9.30 A.M. A public protest rally was held in the afternoon of 8.3.99. There was a Karbi. Students Hostel at Ambikagiri Nagar in Guwahati and Shri Bhogeswar Teron, General Secretary of the Karbi Students Union was lifted from that hostel in a Maruti van and tying his eyes and mouth by black cloths, he was taken to an unknown destination and there he was severely tortured and asked various questions regarding Shri Haren Teron's. family and thereafter he was released only in the evening of 8.3.99. that meant after the killing. It might be the unknown destination was the Usha Cout itself. Shri Bhugeswar Teron's case was reported to Geeta Nagar P.S. but it fizzled out.

N.W. 1 is Shri Satyanarayan Adhikari, then O.C. Basistha P.S (Nov. 1996 to Feb 2001). received the information on 8.3.99 at about 6.45 A.M. and with his staff proceeded, at 7.10 A.M. to the place of occurrence arriving there at 7.45 A.M.(distance 7 k.ms) in a Papa Mobile vehicle and found the dead bodies of Haren Teron and Bipul Teron on the varendah, while that of Smti Barhani Teron inside the house. and he himself performed the inquest over the bodies; recovered 9 Nos of empty cartridges of A.K. 47 rifles from one spot, 9 Nos of empty cartridges of A.K. 56 rifles from another spot and 13 Nos .9 mm cartridges from still another and 1.No. of .45 Automatic empty cartridge at another spot and seizure listed the same. He examined 7 persons u/s. 161 Cr.P.C.. Smti Mamoni Teron stated that 11/12 black dressed and black cloth and "Gamocha" covered faces, armed with deadly firearms, came and killed her parents and elder brother. and after they left, she came out of her bed and shouted when the

villagers came. The case was registered at 10 A.M. on the FIR signed by Niren Teron, submitted by the villagers, which stated Haren Teron to have been of 65 years, Barhani teron of 50 and Bipul Teron of 20, and Mamoni Teron of 16 years. Police took a photograph of the place of occurrence. O.C.'s Report dated 2.2.2001 stated that Haren Teron's son Shri Putul Teron was in the ULFA and was wanted in several cases, and it could not be ascertained which group was responsible for the killing.

In cross-examination the O.C. stated that after receiving the FIR he sent it to the Seristadar who alone could explain the overwriting on it. He did not move for the place of occurrence on receipt of the oral information, but waited till the villagers came and submitted the written FIR. He did not record any statement of the Informant Shri Niran Teron when FIR was lodged. Mamoni Teron told him that the miscreants wore black cloths and covered their faces with "gamochas". He did not ask Mamoni Teron as to in what language the miscreants spoke, as to how could they enter into the house and as to whether they were army men, policemen, or CRPF. He found Mamoni Teron on his second visit on 19.3.99 in a neighboring house, but she was unwell and so nothing was asked. From the neighbouring houses, he examined only Khargeswar Kathar on 30.3.99 and no others. He was not at the neighbouring house, but at the Marriage ceremony at that time. Khageswar stated "yesterday", how could he say so on 30.3.99? O.C. said that was his statement. The O.C. knew that Shri Putul Teron, son of Shri Haren Teron was an ULFA about two years after his joining Basistha P.S. from a list of ULFAs sent him by Shri Bhaskar Jyoti Mahanta, then S.P. with instructions to keep watch on the activities of those listed persons and cautioning that there could be some incidents in that line and actions to be taken in that line. The list contained ULFAs of Guwahati and also of those who came to stay therein. Till that list was received, there was no information at Basistha P.S. showing Shri Putul Teron as ULFA and his activities, as such, if any. Accordingly, police modus operandi was engaging sources, consulting the village Headman, the V.D.P. and travelling the areas and visiting the ULFA houses at least once a month, but often it was difficult to maintain that. While visiting police asked Haren Teron to persuade Putul to surrender, but Haren Teron said that he knew nothing about the matter. The O.C. said that there were roundabout 25 Sulfas within Basistha P.S. area and the P.S. maintained a list of them and their activities, including encroachment of land by them. It was in the knowledge of the O.C. that some Sulfas had formed a coal Syndicate at Guwahati, to the exclusion of others in the business; and it had a network at all places where Coal was dealt with, like Noonmati Baihata Chariali, Jogighopa, Goalpara, etc. creating a Mafia Raj. In that context, he also heard the name of Shri Jugal Kishore Mahanta, but did not meet him personally. Basistha was a coal syndicate area and connected Sulfas stayed there, but the P.S. was not keeping regular watch on their activities in that regard. Basistha P.S. has two outposts, Jorabat and Gorchuk, the latter being nearer to the place of occurrence, about three and a half kms. There were no checkposts between the two points Basistha and Gorchuk, only night patrolling was there. There was a police picket at Lokhra at that time. There has been no record of the seized empty cartridge cases being sent to the forensic/ballistic experts. The C.D. does not have anything to show that the D.S.P.'s instruction "D" to ascertain whether the empty cartridges recovered from place of occurrence herein tally with any weapon earlier seized by police in Kamrup City and other districts with a view to ascertain the group involved in the case, and the O.C. did not remember why it was not

carried out. He also did not compare the modus operandi of this case with those of earlier extremist cases to identify the authorship of this case. The road up to Haren Teron's house was not motorable after the forest post point, and beyond that the road was kutcha, only small vehicles could go to the gate of Haren Teron's house. He did not remember to have tried to ascertain the class and number of vehicles used by the assailants. The O.C. did not believe that B.L.T or NDFB was involved in this case. He did not ascertain the particulars of the vehicles used despite there having been a supervisory instruction and contemporary media reports to that effect. He did not give any thought to the hypothesis of retaliation to the Usha Court attack hours before the incident..

N.W. Shri Swapan Dasgupta, was the D.S.P. of Dispur Division. On 8.3.99 he learnt from the O.C. Basistha P.S that the three persons were killed by unknown assailants at about 2.19 A.M. in the morning. He immediately rushed to the place of occurrence and there learnt that the dead bodies were already sent for Post-mortem to the Guwahati Medical College Hospital and found the empty cartridges recovered from the place of occurrence, ordered those to be preserved for further investigation and then interrogated villagers assembled there, but none could tell anything regarding the culprits. He also searched about 5/6 places within 5 mile radius, and scanned the roadside, but could not find any incriminating material. He proceeded to the Hospital morgue to examine the dead bodies where he learnt that a gathering at a field was awaiting for the dead bodies to take out a procession, and he rushed to them and persuaded them not to take out such a procession which might worsen the situation and the people agreed not to do so. In cross examination Shri Dasgupta said that he reached the place of occurrence at 8 A.M. when formalities on the dead bodies were already completed and the bodies already sent. He neither saw the sketch map nor the seizure list, nor did he direct the material exhibits to be sent for forensic/ballistic examination. He did not receive any information or particulars of the vehicles used by the assailants, nor about the place or marks left by the vehicles. He was acquainted with the house of Shri Babul Ingty who was a hardcore ULFA but did not know whether police maintained some surveillance over it. He did not know whether Shri Babul Ingty visited his house sometime earlier than the incident, though he had issued order to track him. There was a marriage ceremony in the village that night, but he did not ascertain whether some of the neighbours were at their houses at the time of incident. He denied the suggestions that he deliberately slackened the investigation, did not take proper investigative steps with a view to conceal the culprits whom he knew and made an eye wash of the investigation as he knew that none else than the police did it in collaboration with the ULFA as prearranged by the state. He examined the P.S.O.'s Sulfa occupants of the Usha Court apartment, but not the occupants themselves, because he designed to protect them, and that the position was the same with the Sukuri Boro's case which had the same modus operandi, indicating the unity of the culprits in both the cases..

N.W. Shri Jogesh Ch. Barman, the then Addl. S.P. (City) remembered that someone informed him about the incident and he remembered to have visited the place of occurrence where he found the O.C. and the I.O. carrying on the investigation, which he oversaw, but the dead bodies were not there as those must have been sent for post-mortem examination. He instructed the O.C. and the I.O. to continue the investigation in the right direction. He did not interrogate any Sulfa as directed by the S.P. in his letter

dated 9.3.99 as no Sulfa was suspected or interrogated by the I.O. during his time till 31.3.99, his date of retirement.. He could not send compliance report to the S.P. as the I.O. did not place the case record before him despite his instruction. He also could not furnish the list of P.S.O.s attached to the Usha Court Sulfas and the ammunitions issued to the for the same reason. While supervising the investigation, he did not find anything to be interfered with Till the date of retirement on 31.3.99 he did not form any impression about the case. He was there from 1997 to end of March 1999 His responsibility was to assist the S.P.(City) in all matters unckuding crimes. At that time the Unified Command structure wxcluded Guwahati City as Army operation was not there., but the police could operate of its own Maruti Gypsy vehicles were allotted to different police stations in Gauhati City according to exigencies. Shri Barman was also was allotted a Maruti Gypsy, but it was coloured Steel grey. The D.S.P.s were also allotted Maruti Gypsies and some were of white colour. The Geetanagar P.S. might have been allotted a white one. He knw that Sulfas resided in Usha Court apartments, and he visited the Usha Court in the evening of 7.3.99 aftder the rocket propelled grenade attack was made. He neither remembered the media reports that the Usha court grenade attack was madde by the ULFA, nor that the Usha Court Sulfas went berserk in retaliation and went in a body with arms in vehicles and massacred the parents and brother of ULFA putul Teron @ Babul Ingti and then went to the house of Ulfa Nirmal Boro and massacred his grand parents and his mother in retaliation. He could not ascertain the cause of the attack on Udsha court as the matter was still inder investigation. The evasive nature of the replies is writ large.

N.W. Shri Bhaskar Jyoti Mahanta, then S.P., Guwahati (City), received the information teephonically from some officer whom he could not now recollect, considering it to be a "sensational case" he instructed the different police stations to put up road blocks and barricades so as to intercept the fleeing vehicles and culprits. He issued three consecutive self-explanatory supervisory notes in investigation of the case on 9.3.99, 15.3.99 and 9.5.2000 containing relevant instructions to his subordinate officers. The supervisory note dated 9.3.99 was an instruction to the then Addl S.P.(HQ) Shri the Addl S.P.(HQ) City, Shri J.C. Barman to interrogate all possible suspects including the SULFAs. Shri Mahanta stated the reasons behind this instruction as (1) there was a hue and cry in the media suspecting involvement of the Sulfas; (2) as it happens even now during those days, in the pretext of surrendering there were instances of ULFA coming ovrground and in the garb of SULFA continuing their subversive activities and relapsing into ULFA; and (3). Sometimes they surreder tactically to avoid punishments. Police itself did not have any perception as to who could be the culprits; and even his instruction "to find out and submit a list of policemen attached to the SU at Usha Court for their personal security and the weapon allotted to them. You may indicate from which agency they were issued to them" was also issued on basis of media report. The witness did not remember whether the modus operandii of the Basistha P.S. case No.58/99(Haren Teron and family killing case, the Kshetri P.S. case No.45/99 (Sukuri Eloro and family killing case) and the Geetanagar P.S. Csc No.29/99(Jyotish Sarma Kindapping/killing case) were similar or not. As the SULFAs of Usha Court were provided securities prior to his posting as S.P.(City) he had no threat perception idea od the Usha Court Sulfas, but says some such perception might have been there at the relavant time. He himself wrote several letters to different authorities "to do way with

the infrastructural arrangements which provided bad characters including some Sulfas to indulge in crimogenic activities. Such Check gate system creates a crimogenic situation and bad characters take advantage of those situations." There is no record of the empty cartridges and ammunitions seized from the place of occurrence having been sent to forensic/ballistic examination.

Shri Mahanta was aware of the grenade attack on the Usha Court apartment in the evening of 7.3.99 and of the Sukuri Boro and Kantaran Boro killing case from media report; and in this case also he issued three almost similar supervisory notes. He did not meet any SULFA occupants of Usha Court, but instructed his subordinate officers "to interrogate all possible suspects" Nothing is found in the case diary about examination of any of the Usha Court Sulfas who were there on the night of the incident, and it was not brought to his notice. Though he was the S.P. Guwahati City from end of 1998 to October 2000, he did not know who were the Sulfa occupants of the Usha Court. The O.C.s and I.O.s of different police stations were instructed to keep eye on the infiltrators, including Sulfas. The case diary revealed that the I.O. examined the P.S.O.s of the Sulfa occupants of Usha Court, and the P.S.O.s said that during that night they remained indoors and, according to the witness, it seemed that the I.O. did not think it necessary to see whether their arms and ammunitions tallied with their issue accounts in the department and according to him this might be due to presence of the C.R.P.F. contingent at the time of the incident and the replies of the P.S.O.s the I.O. did not think it necessary to verify the arms of the P.S.O.s. However the witness agreed that the statements of the P.S.O.s was only a police version.. He visited the place of occurrence a day or two after the incident but did not remember whether he met any member. He did not remember if the victim family was there. Asked whether he had any factual basis in his mind in issuing his supervisory note dt 15.3.99 to inquire about Babul Ingti and Nirmal Boro's position in the ULFA and if there was some internal rivalry prompting them into action, he replied that there must have been some factual basis which he has forgotten by then. According to him despite the spate in killing ULFA members, members of their families and relatives throughout the State, the hypothesis of eliminating inter-group rivalry in ULFA could not be eliminated.

N.W. 5 Shri Bhogeswar Teron was then the General Secretary of the Karbi Students Union, its membership comprising all Karbi students of Assam, outside the Karbi Anglong district, and its head office was at the Ambikagiri Nagar.. at Zoo-Narengi Road. On 8.3.99 early morning at about 5 A.M. when he just got up from bed at the Union Hostel at Ambikagiri Nagar suddenly 4/5 persons, all aged 28-30 years, armed with sophisticated weapons, their faces covered with black cloth, enquired about him and after his introduction, introduced themselves as policemen, and asked him to dress and required him to go to the police station and made him sit in the vehicle and immediately tied his eyes with black cloth. He could imagine that the vehicle first proceeded towards the north, then took some rounds so that he could not imagine in which direction it proceeded, and after about 15 minutes, it stopped..he imagined near a house, and immediately they tied his hands behind his back After alighting, he felt they set fire to his beard, and to extinguish he rubbed his beard against his shoulders and felt that he was being pushed down stairs to an underground chamber wherein amidst severe beating with a hunter like object, punching and kicking, he was asked about Babul Ingty, and as he replied that he did not know him or his whereabouts, they searched his pocket

and took out his pocket diary and tied his mouth tight. Beating was stopped, and he feebly heard that they were telephoning to every number his diary contained. After about 90 minutes, he felt another 3 or 4 persons came with sticks and started beating him therewith, and side by side they were asking if he knew Shri Tirtha Gogoi alias of Nirmal Boro, and his whereabouts and also those of Shri Babul Ingti, and on his again saying "No" the men said "apuni janiboi lagibo" You must know, being the General Secretary of Karbi Students Union. He replied that if the two had any other names, they could tell him and he would think about. Then they stopped beating, About 2 hours hence one person seemed to have come. Then his mouth bandage was removed and a pistol barrel was thrust into his mouth and he thought his end had come.. Then the man removed the barrel from his mouth and left. Then they brought some water and made him drink. They brought some vegetable rolls and thrust one or two into his mouth asking him to chew and swallow, which he did, and he remembered the talisman which a Behari woman gave him saying that so long it was with him, none could kill, he would survive everything, and with his bandaged hands probed his back pant pocket. Lo and behold, the talisman was there, and he remained undaunted.. Another person came and commanded for light and light came. He showed to Bhugswar Teron every number and asked all about it which he sincerely gave. Then beating repeated and he profusely bled from different 1 parts of his body including his chest, and he fell down. After about 90 minutes, another man came and ordered his bandages to be removed, and when done, he gave the victim some pain killer tablets and asked whether he would drink, and he replied that as tribal he would do. they brought a bottle of India made foreign liquor and gave him three pegs, and thereafter told him that it was offered to make him frank and divulge; that they tried him in all possible ways; and that all the persons contacted with his diary numbers spoke well of him and, therefore, they would not kill him and that he was brought by mistake, and that there was a procession at Sonapur, and declaration of 12 hr. bandh for his safe return and asked him if he would be able to control these movements. On his expressing inability to do so they said he will be killed, and knocked his head with a rifle butt and again asked him about Tirtha Gogoi and Babul Ingti.. Those persons left and another person dressed in black from top to toe came and put the barrel head of his A.K. 47 rifle on his forehead, but suddenly someone from upstairs shouted "Boro", "Boro" swooped downwards and took the A.K.47 rifle away, the gunman also went up. Another man came down and gave him a five hundred rupee note for treatment and promised to bear all his expenses for treatment. They decided to release and intimidated him, but his eyes remained tied. They helped him upstairs asking him to take tiny steps and then to their vehicle stopped near the wall of our hostel and alighted me asking me not to untie his eyes till they disappeared; Untying his eyes after a while he was happy to be back. on 9th morning. The Hostellers having informed my arrival the Geetanagar police officers and constables took him to that Police Station. who asked him who kidnapped him, on his replying that it was police who did it, they observed that : "it might be by some other wing" and registered a case..

In cross-examination the witness said that while being taken by the armed men he told hosteller Shri Mukesh Turung that he was being taken to Geetanagar Police Station; that the vehicle in which the miscreants took him was a white Maruti van, but he did not notice its number; the driver was in civil dress; After saying "start" they did not talk; it took 15 minutes to reach the destination; when arrived, they exclaimed "we have

brought we have brought"; he was made to walk about 25 steps downwards to reach what seemed to be an underground 20/15 ft. room of a building, there were 5/6 small plastic chairs; no photos on its walls; the vehicle movement sounds being feebly heard therefrom; and the people addressed him as "apuni"; the people spoke Guwahatian Assamese; ..The person who shouted "Boro, Boro" and snatched away the A.K. 47 rifle wore a Jean pant and a sprting ganzi. The witness was never wanted by police earlier.

During the election whereafter A.G.P. formed the Government, the witness worked for Shri Atul Bora, M.L.A. from Dispur constituency to Assam Legislative Assembly, but before this incident Shri Atul Bora dissented and was nurturing his Trinamool A.G.P. and the Karbi Students Union was still working for him, though he became critical of Shri Prafulla Kumar Mahanta. He was asked:

Q. Everything said and done, what was your impression about who could have been the persons taking and torturing you as you have described ?

A. My impression at the end of the exercise was that it could have been taken either by the Special Branch of Assam Police or the SULFA. The witness knew the Usha Court apartments; and that the Special Branch of police had its own intelligence, and agreed that without connivance or collaboration of State police, the concerned Sulfas themselves could not have done so...

The most significant fact was that Shri Bhugswar Teron was asked the names and addresses of Karbi and Boro leaders other than Babul Ingti and Nirmal Boro. One explanation might be that they knew that the two families had already been killed and might have plan for the rest and that is why they tested every address found in Bhugswar's pocket note book.

N.W, 8 Shri Jugal Kishore Mahanta, who was allowed to peruse the entire case record, and was furnished with the copies of the papers he required, and on his prayer, allowed to cross-examine Shri Lachit Bordoloi, P. W. 1, was present before the Commission when his learned senior counsel Shri A.K. Bhattacharjee cross examined Shri Lachit Bordoloi. The cross-examination was mostly on the activities of the Manab Adhikar Sagram Samity (MASS) and of *voir dire* nature. Shri Bordoloi said that he did not know Shri Jugal Kishore Mahanta personally. He knew from newspapers that 5/6 Sulfas used to stay in Usha Court at the time of grenade attack, but did not know who else were there, and that he collected the information of the Haren Teron killing case by visiting the place of occurrence, meeting relatives and the villagers as well as the policemen who visited the house of Haren Teron and family. The Commission made it clear that the MASS was considered to be only a conduit pipe for bringing the case before the Commission, and that everything in the case has been considered on basis of evidence. Considered from this angle, the earlier deposition of the witness Shri Lachit Bordoloi could not be taken to have been shaken or demolished in his cross-examination. On the contrary, the witness did state that after the R.P. Grenade attack on the third floor grill of the Usha Court apartments building, the hierarchy of the then Police Officers including the then DGP Shri P.V. Sawant, the I.G.P. (Operations) Shri G.M. Srivastava, the DIG Shri Dilip Bora, S.P. Shri Bhaskar Jyoti Mahanta, the Addl S.P. Shri P.K. Dutta were stated to be present there. It was stated by Shri Bordoloi that as lot of persons in civil dress were moving with arms and ammunitions, the DGP being unable

to say who they were, the S.P Shri Bhaskar Jyoti Mahanta said that some of them were policemen in civil dress and the others were Sulfas.

In his affidavit in support of his application for time, Shri Rinku Choudhury stated that he had no personal knowledge about the incidents under enquiry in the Bashistha P.S. Case No.58/99 and Kshetri P.S. Case No.45/99, and he was in no way connected with those cases. He being no more, his statement is accepted, and he shall be without any blemish in these cases. Again, *actio personalis moritur cum persona*. Personal actions die with the person. His heirs and successors will not be affected thereby anyway.

In his Affidavit in support of his application for discharge of the s.8B notice issued to him, Shri Jugal Kishore Mahanta flatly denied all the allegations made against him in Lachit Bordoloi's deposition, and stated that his name was mentioned only in an answer to a question in cross-examination and no evidence was produced against him, but admitted that he was an inmate of the Usha Court apartments at the relevant time. He was examined and cross-examined in the Commission.

Shri Jugal Kishore Mahanta (J.K. Mahanta, for short) was examined in chief by Shri A.K. Bhattacharjee, Senior Advocate, and cross examined by the learned counsel for the applicant Shri Nekibuzzaman, Advocate and the learned senior counsel for the Commission and the learned Senior Govt. Advocate, Assam, in turn. Shri J.K. Mahanta joined the ULFA in 1985 on the foreigners issue as the sovereignty issue was not there with the ULFA at that time. Then there was no ranking in the ULFA and so he had no rank, but he was the District president of the then Dibrugarh District. Several killings and extortions cases took place during his tenure, but those were under the jurisdiction of the C-in-C (Commander-in-Chief) of the ULFA, as at that time ULFA had two wings, Civil and military; and he was in the Civil Wing, and as such had nothing to do with those cases. He admitted that he received arms training from an instructor of the NSCN (National Socialist Council of Nagaland). The training included operations of different types of rifles, revolvers and pistols. He admitted that he was arrested in connection with several cases. Replying to a question as to what type of cases those were, he replied that the police used first to arrest and then put the sections as they liked, and that murder and extortion cases were there, and that some of those were still pending. He surrendered in 1992 before the D.C. Dibrugarh along with 200 others, including Shri Saurav Gogoi the District Commander, Shri Tapan Dutta the General Secretary of the district (Civil Wing). The arms surrendered by them included I.M.G.s, German made rifles, revolvers and pistols. He stated that the then General Secretary of ULFA Shri Anup Chetia persuaded and organised the surrender with 200 other ULFA members, but Shri Chetia himself did not surrender. This was a significant step inasmuch as the large scale surrender was, perhaps, expected to deal a vital blow to the ULFA. Shri Mahanta said that since the above surrender till the death of Shri Tapan Dutta in 1998, there was no threat to the surrendered ULFA, now called SULFA, from the side of ULFA, but threat started thereafter. However, he said, all the SULFA killings were not by ULFA, some were for business rivalry and personal animosity.

According to Shri J.K. Mahanta there were only two Sulfas in the Usha Court, he himself on the 3rd floor, and Shri Bhaskar Sarma on the 4th floor. When he was told by counsel that Shri Dibakar Deka, saying that he was a resident of Usha Court, lodged an FIR at the Geetanagar P.S. on the grenade attack, he said that Dibakar Deka had never

been a resident of the Usha Court. As regards, Shri Rinku Choudhury, (since no more,), Mahanta said that he came long after the grenade attack. However, the statement of Shri Lachit Bordoloi, that Shri Bhaskar Jyoti Mahanta, then S.P(City) that of he large number of civil dressed persons in the compound of the Usha Court after the grenade attack, some were policemen in civil dress and some were Sulfas. This would also mean that Sulfas there could have included some from outside the Usha Court. After surrender, Shri Mahanta, as he says, has been carrying on business and devoting to socio-cultural activities to put an end to violence, and he believes the media to be the fourth estate in democracy. He had read the reports of secret killings and in fact condemned the killings of Mithinga Doimary's family. He had also seen media reports regarding violent activities of Usha Court Sulfas and saw the media reports about Sulfas killing people in collaboration with the State police at the direction of the then Chief Minister of Assam Shri P. K. Mahanta along with the I.G.P.(Operations), but he would not react to such reports unless there was direct mention of his name therein; and that it was not possible to react to such reports coming out almost every day.. . .

With reference to a statement reportedly made by two Hon'ble A.G.P.Ministers that the arms given by the previous (Congress) Government to the Sulfas could not be taken back, asked whether he had any such arms, Shri Mahanta said that presently he possessed only licensed arms, namely one pistol in his name, one in the name of his wife, and two rifles of non-prohibited 12 and 30 bores. He was associated with the Jatia Mahasabha of the Sulfas and for putting an end to violence, number of "karmasalas" were held in different districts of Assam, but it did not make the Sulfas belong to a party.. He knew Shri Tirtha Bhuyan who hailed from Nityananda of Barpeta.

Drawing attention of the witness to the news item Shri Mahanta was asked:

Q. In the news paper "The North East Times" in its issue of 8th March 2007 published "It may be mentioned here that the Usha Court Apartment has become a safe heaven for the surrendered militants and the large number of Sulfa activists are staying in that campus from last six months. A top Sulfa leader Shri Jugal Kishore Mahanta hailing from Dibrugarh was among them who has unleashed a reign of terror in the apartments and most of the owners have left the apartment and vacated their flats due to the fear from the Sulfa. Sources have hinted that it was the handiwork of someone to target Shri Mahanta who has come here recently. However, the RPG missed its target, The sources added." An unruly scene prevailed following the incident. It was the SULFA men who cordoned off the campus brandishing A.K.- 47 and the Police and the para- military forces were left as just mute spectators. The SULFA men even prevented the media persons from entering the campus to collect information."

Did you have any occasion to go through this news item? If so, whether the statements are correct?

A. Nothing stated in the above statement, except there was a rocket attack on the Usha Court Apartment was correct.

Q. I put it to you that whatever has been stated in the above statement is correct and you did not contradict it for reasons best known to you.

A. It is not correct..

Q. I put it to you that after the rocket propelled grenade attack on the 3rd floor of the Usha Court Apartment, some SULFAs, arms in hand, surrounded the Usha Court Apartments and nobody could enter into it to know what happened, and there was evidence that those who were with arms, were Sulfas and police in civil dress, and they went out in the presence of the public and the Police Officers and sometime later at Lakhara in the house of Babul Engti, his father Haren Teron, his mother Barhani Teron and his younger brother Bipul Teron were massacred and few hours thereafter, the same persons proceeded to Sonapur, and similarly massacred ULFA leader, Nirmal Boro @ Tirtha Gpgoi's grand parents Sukuri Boro and Kantaram Boro, aged about 84 years, and almost fatally injured Nirmal Boro's mother Smti Rambha Boro. What do you say about it?

A. It is not correct and is totally false”..

Shri Mahanta remembered to have made a statement to the effect that “if ULFA attack us, we also shall not remain quiet”, and thereby he did not mean that if ULFA killed them, they would also kill ULFA. He denied the suggestions that all the secret killings in the State were planned in the Usha Court and that he planned and executed the killings of the families of Babul Engti and Nirmal Boro, and the Police- Sulfa nexus executed it.

Asked whether over and above the two persons he mentioned, Shri Dibakar Deka was also a resident of the Usha Court, Mahanta answered that Dibakar Deka had never been a resident of the Usha Court. Being told that on 7.3.99 Dibakar Deka was examined at the Usha Court after he lodged an FIR at the Geetanagar P.S. on the Grenade attack incident and therein he described himself as a resident of the Usha Court, Mahanta replied that what was stated by Dibakar Deka was not known to him, but he knew that Dibakar Deka was not a resident of the Usha Court.. Mahanta also did not know if any FIR was lodged at all, but he himself was examined by police coming from Geetanagar, Chanmari Police Stations and also by S.B.I and the CID He remained in the Usha Court till about a fortnight after the grenade attack. Mahanta was allotted two security officers (PSOs) but sometimes they were changed and sometimes some withdrawn.. Shri Bhaskar Sarma, the other Sulfa inmate, according to him, was not provided any security....

Cross-examined by Shri P.K. Musahary the learned Senior Govt. Advocate, Assam, Shri J.K. Mahanta said that he did not inspect the spot wherefrom the shoulder-mounted R.P.G. was fired., and that, according to Forensic and Police reports, it was fired from a bye-lane. The rocket was of army origin, but the country of manufacture was not known. He did not know if the ULFA owned responsibility for the R.P.G. attack, and he did not think that it was caused by some Police agency or by the Police themselves. He also did not think that as SULFA was Congress- created, the succeeding A.G.P. Govt, through some instrumentality, caused the R.P.G. attack with a view to provoke the Usha Court- based Sulfas against the ULFA, so as to make them kill ULFA family members and relatives, to suit the State purpose.. The then S.P.(City) Shri Bhaskar Jyoti Mahanta directed the Addl S.P. (City) Shri J.C. Barman to examine the Usha Court Sulfas and the security personnel allotted to them, in connection with the Basistha, Kshetri and Geetanagar cases.

Shri J.K. Mahanta was provided with 2 Uniformed P.S.O.s. There were some P.R.C (Provincial Reserve Constabulary) personnel at the Usha Court. Mahanta did not remember the details of his security personnel. He did not remember whether the P.R.C.s 1. Shri Rajib Nath, 2. Shri Amar Taro 3 Shri Santabir Chetri and 4. Shri Digen Sonowal were the P.R.Cs attached to him. When he used to go out his P.S.Os would move with him either in his vehicle or in some other vehicle. Shri Bhaskar Sarma used to move with him in his own vehicle and often other Sulfas also in their vehicles and sometimes there used to be an entourage, and it could be, they carried A.K.-47, A.K.56 rifles and even carbines. Of the four apartments on the 3rd floor of the Usha Court two (internally connected) were in his possession, one was vacant that day, and the other was occupied by the builder. Shri Amrit Barua. He said that there was a basement in the Usha Court, the ground floor was used as a basement. Shri Bhaskar Sarma was from Tinsukia and close to him, being junior and calling him "dada". He would not know if Bhaskar Sarma said there were 25/26 Sulfas in Usha Court. Only during this cross-examination he learnt that Dibakar Deka lodged an FIR at the Geetanagar P.S. on 7.3.99. Shri J.K. Mahanta remembered that Dibakar Deka met him, but did not remember the dates. Of his two rifles, the 12 bore was smooth bore and not prohibited bore. the 30 bore was rifled and was specifically applied for destruction of wild animals, and was licensed as non-prohibited bore. Both were purchased from Tinsukia in the year 2000.. He started his contract works after surrender in 1992 with the Rs. 2,00,000 (Rupees two Lakh) received on surrender from the Govt. and loans from friends and relatives, total capital was 3,50,000. (Three lakh fifty thousand) and he became Class 1(A) P.W.D. contractor in 1998. He denied the suggestion that he had much more capital above Rs.3.50.000 for being such a Contractor. and he deliberately concealed it before the Commission.. The learned Senior Govt Advocate asked:

"Q. I put it to you that in fact at the time of your surrender you had a huge amount of ULFA funds with you and after your surrender you continued to possess the same and you utilised the same in your business, for which it was possible for you to attain such a status in such a short spell of time.

A. It is not correct."

Shri J.K. Mahanta was asked about the kidnapping and torture of Shri Bhugeshwar Teron, then General Secretary of the Karbi Students Union, supposed to be in the Usha Court, and he said he was ignorant about it. He also did not know the cases of Kidnapping and torturing of Shri AJay Talukder of Nalbari in connection with the Khagen Das kidnapping case. and also about the kidnapping case of Shri Hemen Kalita of Birubari, Paltan Bazar, Guwahati...

From the above evidence, the identity of the killers and their accomplices, if any, has to be on the basis of the most reasonable hypothesis. Three hypotheses seem to emerge, namely, it could be caused, by some other ULFA group than that of Shri Putul Teron; or by the Sulfas of Usha Court in retaliation, or as State police plan executed by the Police- Sulfas of Usha Court nexus.

The first hypothesis does not stand scrutiny inasmuch as Putul Teron @ Babul Ingti reportedly having been the Action Commander in charge of Guwahati, it was not likely for other Ulfas to have killed their Action Commander's family members.. No ULFA

would normally welcome such a fate to his own parents and brethren. There has been no evidence whatever of there being any rift between any other ULFA and Shri Putul Teron @ Babul Ingti. The *modus operandi* and the facts and circumstances do not tally with those of the ULFA killings. Hence it is rejected. ..

The Usha Court Sulfas hypothesis figured in depositions. It almost suggested itself. . Shri Bhaskar Jyoti Mahanta spoke about crymogenics, also hinted examination of the Usha Court Sulfas and their security personnel. It seems what were the Sulfa camps in other towns, Usha Court was that for the Guwahati city. The security prsonnel at Usha Court were examined by Shri Swapan Dasgupta and also by Shri Mani Saikia in another case. They were in symphony. Because of the grenade attack in the evening, they were afraid and none of the inmates went out during the fateful night. The Nalbari Sulfas also said, because of death of a Sulfa previous day, none went out during the fateful night. The protected Sulfa element had its penumbra on evidence. The news items referred to in evidence were, no doubt, not contemporary to the incident, but published several years posthumously, though interest in the subject matter could not be said to have been stale. However, Shri Bhaskar Jyoti Mahanta, then S.P. City, said in course of investigation that the media reported that the Usha Court Sulfas were responsible for the killings. and that by then. Mamoni Teron, the sole surviving witness in this case described the assailants to have been in black dresses and covering their faces with black cloths and "gamochas" There is no mention of the language used by them, except what the gamochas might indicate. The Usha Court Sulfas, as in evidence, did not amount to 11/12. We learnt about Shri J.K. Mahanta, Bhaskar Sarma, Dibakar Deka and Rinku Choudhury (since deceased) Of course, there were 3/4 Sulfas as source in the Guwahati Police Reserve, and some outside Sulfas were also there cordoning off the Usha Court after the grenade attack. Civil-dressed policemen and Sulfas were reportedly brandishing their sophisticated weapons. But it was not stated that they wore black dresses. Of course, camouflaging for the purpose could not be ruled out altogether. Shri J. K. Mahanta said that his wife was recuperating after a knee operation and he was busy removing her to another room. The attack could have been towards him. The term of reference includes killers and accomplices, if any. Uncontradicted media reports and oral depositions may not be ignored. In matters of general public importance news items, as the Supreme Court held, may be looked into, though herein they relate more to the grenade attack incident rather than directly to the killing incidents. However, the depositions based thereon could not be said to have been shaken, far less demolished. in cross-examination. The fact that the two killings at Lakhra and Sonapur closely followed the Usha Court grenade attack was emphasised by Shri Nekibuzzaman, the learned counsel for the applicant who also pointed out the similar killing cases closely following the killing of Sulfa Shri Tapan Dutta. Yet we have to remember the logical fallacy of *Post hoc ergo propter hoc*. After this, therefore, on account of this. This is fallacious. . Soon after the moon was seen in the sky, the child died. Therefore, the rising of the moon is the cause of the child's death. That will be erroneous. Things go on happenining in course of time. Some follow others. That itself, without more, does not set up any causal connection and does not probabalise the entire activities, namely, being equipped with such sophisticated firearms, the personnel as described in evudence, the vehicles used, in the journey to the place of occurrence, at the dead of night, without being detected by police, and the *modus operanii*. Proximity of time alone is insufficient.

Even if so believed that far, it would also be relevant to consider how far the Sulfas alone could have travelled the distances and commit the killings without being detected by police dragnet and other detective arrangements en route and back. For all these reasons this hypothesis may not be beyond reasonable doubt. For all these reasons this hypothesis may not be beyond reasonable doubt.

The State Police- Sulfa nexus hypothesis may now be tested. This will mean all the elements discussed in Usha Court Sulfa hypothesis plus all those factors attributable to the State in this context, which suggest it to have been part of the State plan of Ulfocide, that is, the deliberate secret killing of the Ulfas and members and relatives of their families, using some Sulfas as striking arms or executioners. In fact, in this case something more is there, and that is, the natural probability of retaliatory action by the Usha Court Sulfas and their outside colleagues, against the grenade attack, if attributed to the ULFA, considered in light of the evidence in the case records, as truly interpreted..

There was one eye witness to the killings. She was Mamoni Teron youngest daughter of Haren Teron who was hiding under her bed and therefrom saw the killings, as if as God's witness. She saw 11/12 assailants black dressed and covering their faces, some with black cloths and some with 'gamochas' All in black could be Black Panthers, one could guess, or camouflaged. News items themselves may not provide the foundation for holding one criminally liable. However, the Supreme Court said that when the matter is of public importance the Court can look into it. Looking into them in public interest it is seen that what have been described in the news items relating to Usha Court grenade attack incident have not been contradicted by any one. In cross examination the statements of P.W. 1 based on those items were not shaken or demolished. The attribution of the grenade attack to the ULFA has not been doubted or challenged in evidence. Armed police in civil dress and Sulfas brandishing Arms proceeded openly to their destination when the State Police hierarchy remained a mute onlooker. Presence of Usha Court and outside Sulfas and civil dressed policemen, as depicted, could not be disbelieved. *Ex nihilo nihil fit*. Out of nothing nothing comes. Had nothing happened, the media reports would not have been there. The reports remained uncontroverted. The deposition of Shri Lachit Bordoloi could not be demolished or shaken. On the other hand, all these factors suggest it to have been part of the State plan of ulfocide, that is, the deliberate secret killing of the Ulfas and members and relatives of their families, using some Sulfas as striking arms or executioners. In this case, besides proximity of time, something more is there, and that is, the natural probability of retaliatory action by the Sulfas against the grenade attack if attributed to the ULFA. With this natural probability of retaliatory action on the part of the Usha Court Sulfas and their Sulfa colleagues. For these reasons this hypothesis may be beyond reasonable doubt.

From the evidence on record it is considered reasonable to believe that the R.P.G. attack was natural to have been attributed to the ULFA, resulting in an intense impulse for retaliation. The Post grenade attack scene depicted in evidence lead to the finding of an impulsive retaliatory attack on those who could be calculated to have carried it out. This ought to have been restrained by the sober elements in the Sulfa as also by those who were in charge of law and order. Nothing happened in that line. Even at that stage if the police functions were performed where the armed men were proceeding could have been found out and intercepted. Absence of such steps only would lead to the conclusion

that what was going to happen would be to their liking. The reasons are obvious. ULFA fobia had its effect on Govt activities. Written appeals were published by the Chief Minister in Sahitya Sabha and other literary journals. It became part of the police-military duty to visit ULFA families and pressurise relatives to bring their ULFA wards back to the main stream by surrender. Army and security forces used to forewarn the relatives that failure to bring their wards back to the main stream would not be good for the families. The Unified Command Structure was utilised mainly for that purpose. The State Police also wrongly considered themselves entitled to shoot at sight local boys garbing them as Ulfas, under the Armed forces Special Powers Act. Their right of private defence was only a protective shield. The history of secret killings in the State was the results of this attitude. However, the decision in this case has to be taken on the basis of its own evidence on record. The presence of hierarchy of a set of high police officers was not controverted. Cordoning off of the Usha Court by Sulfas brandishing their weapons remained unchallenged. The fact that the killings came hours thereafter is supplemented by the other pieces of evidence such as non-examination of the empty cartridges and ammunitions by forensic/ballistic experts, perfunctory nature of investigation, failure to arrive at any clue, non examination of any perpetrator or accomplice, hasty submission of Final Report (F.R). and non-payment of any compensation to the victim families corroborate the hypothesis. All these factors put the State Police -SULFA nexus hypothesis beyond reasonable doubt. The City police administration was a party to it. The post-mortem reports truly reveal the brutality on the unarmed, helpless and unsuspecting family members of two ULFA leaders at unearthly hours. Two successive killings in two ULFA families the first around midnight and the other at about 4A.M. considered along with the post-mortem reports of each of the deceased make this hypothesis appear most reasonable and appropriate to be acted upon. The modus operandi and the common characteristics with all other cases under inquiry lead to the same conclusion. The armed persons entered the house, asked how many people were there, and who were they, called them near, made them sit on the verandah and shot at them repeatedly at point blank range. Secret killings by the armed people left some direct evidence, and circumstantial evidence pitched together prove beyond reasonable doubt who were the killers and their accomplices, if any. .

On the basis of the above evidence and hypothesis, it is considered reasonable to limit the identification of the killers and their accomplices to the Usha Court Sulfas, namely, Shri J.K. Mahanta, Shri Bhaskar Sarma, Shri Dibakar Deka, and such other Sulfas as joined them in commission of the dastardly killings, and the Guwahati (City) Police Administration who may be proved to have excited, helped or facilitated the commission of the killings of the family members of ULFA Shri Babul Ingti on 7/3/99 as found in evidence on record of the Basistha P.S. Case No 45/99. The Police hierarchy, up to the Home Minister would also be included by the principle of respondeat superior..

It is recorded as fact that Sulfas Shri Bhaskar Sarma and Shri Dibakar Deka could not be heard, as their notices were not accepted, and then Commission's hearing ended..

This case deserves to be revived and re-investigated.

(C) Whether there was any conspiracy in targeting Shri Haren Teron, Barhani Teron and Bipul Teron and the motive behind such killing.

This term is replied in two parts, namely, 1. Conspiracy in targeting, and 2. Motive behind the killing.

I. Conspiracy in Targeting the Victim. Conspiracy in the context of the instant inquiry, will mean criminal conspiracy which is defined in Section 126A of IPC as follows:-

“When two or more persons agree to do or cause to be done-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

“A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing. if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation-1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the First report and the same is referred to... The question whether there was any conspiracy or not in the killing of Haren Teron, Barhani Teron and Bipul Teron has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that the family members of Shri Putul Teron @ Babul Ingti were requested by various Govt. agencies to persuade their younger brother Shri Putul Teron @ Babul Ingti, who had been an ULFA, and were forewarned by the army, the CRPF and Police that if Haren Teron, Barhani Teron and Bipul Teron could not persuade, Shri Putul Teron @ Babul Ingti to join the peace talks and bring peace, the consequences would not be good for the family. The persons who participated in the act of actual killing on the fateful night, must have been the same or their agents and accomplices and as such, there could be no other answer than that there was criminal conspiracy in the killing of Haren Teron, Barhani Teron and Bipul Teron.

There is evidence to show that the SULFAs were enjoying protection from the Police. This may have disabled the Police from taking the right action against the concerned Sulfas in this case. Similar situation was found in case of Nalbari police

sheltering Sulfas. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an Extra-Constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of Haren Teron, Barhani Teron and Bipul Teron, there were 5/6 persons (some said 10/12) in the act of killing. But there was a course of conduct involving the deciders of the course of action culminating in the killings. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of killing show that there must also have been some authoritative institutional assurance of safety to the killers after the act was completed. Therefore, it is held that there was conspiracy of the worst kind, being among the protectors against the victims they were bound to protect under the law, in this case..

II. Motive behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of P.W. 1 deposed that there could be no other reason for killing of Haren Teron, Barhani Teron and Bipul Teron except for, that their son and Bipul's brother Shri Putul Teron (a) Babul Ingti was in the ULFA. This statement was not challenged in cross examination. Therefore, there could be no doubt that forwarners having been a part of the conspiracy. The then Chief Minister Shri Prafulla Kumar Mahanta published press appeals to the members of ULFA families to persuade their ULFA members to give up path of violence and surrender, the Army, the CRPF and the police accordingly advised the families, and also forewarned that consequences of failure to do so would not be good for the family and persuaded the members of Babul Teron's family in that line. The fact that there was a request made to the literary organizations and Sahitya Sabhas of the State to persuade the ULFAs to surrender is in the deposition of the then Chief Minister Mahanta. In another case. A course of conduct by different agencies towards similar persuasion and the forewarning that in case of failure to effect surrender consequences would not be good for the family of Haren Teron, Barhani Teron and Bipul Teron and thereafter finally culminating in their killing support such a conclusion beyond reasonable doubt. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal rights for every citizen to freedom of thought and belief, freedom of association, the relatives need be pressurized to bring their wards back to peace talks, and why relatives who failed to do so should be mentally tortured and reign of terror let loose and when even then they failed, they should be secretly killed? The way in which, and with which Haren Teron, Barhani Teron and Bipul Teron had been killed leaves no doubt that the killers enjoyed complete immunity for their acts of killing. The way in which in this case, as in all other cases, the investigations were made to fizzle out and the F.R. (Final Report) was submitted shows that the police has been in collaboration with the killers. All these also prove that the entire scheme was being remote-orchestrated from the top of the department. The Minister in helm of the Departments has to be held accountable and need be brought to justice. The matter being

of criminal nature proof must be beyond reasonable doubt. The evidence in the series of cases with common characteristics lead to such conclusion beyond reasonable doubt. ...

II. Motive. The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. The members of the ULFA family has been executed brutally, for no fault of theirs, and only for their belonging to the ULFA family of Putul Teron # Babul Ingti, that was, for a status offence without any sanction of law and in blatant violation of the victim's Legal, Constitutional and Human rights. Intention and motive are often used synonymously. The ultimate motive was the perpetuation of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty and dangerous propensity. In Criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it. However, if undue influence, coercion, or violence is resorted to, that may be illegal, punishable and violative of fundamental and human rights. More so when secret killings are resorted to as in this case.

(D) Pinpointing responsibility on persons involved directly or indirectly in the killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The best evidence rule. "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that 'the best evidence must be given of which the nature of the case permits.' has often been regarded as expressing the greimes Roman Normalat fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, "In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by

direct, and even in criminal cases the corpus delicti may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court".

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this group of seven cases is therefore is relevant and admissible,

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction (p.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e., when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7.2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated (in another case about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of all the earlier cases are found in this case while answering its terms of reference so as to justify a finding of a general plan of "ULFocide" i.e., deliberate killing of ULFAs and their families and relatives, on their basis, namely:

1. That this killing involved an ULFA family, being that of the ULFA Shri Putul Teron, @ Babul Ingti and its investigation is kept pending, but no clue..

2. As in other cases, this killings, of Haren Teron, Barhani Teron and Bipul Teron were committed at 2 A.M or so, so that the assailants could escape under darkness without being detected.

3.. The 10/12 assailants wore black dresses and covered their faces with black wrappers and 'gamochas', to avoid being identified..

4. The weapon used in killing weres firarms of prohibited bores being A.K.-47, A.K.-56 rifles and 9mm pistols of bores generally found in police-military situations. Some of the empty cartridges might have been strewn at the place of occurrence to give a misleading idea. The Post mortem report does not indicate such large scale use.

5. The firearms being of prohibited bores, forensic examination of the material exhibits was avoided. There was no record of the empty cartridges of Aa.K. 47, A.K. 56 and pistol bullets being sent for forensic examination, nor was there any explanation why it was not done. The reasons wre best known to the investigating officers.

6. The vehicles used were never detected or seized, nor were Usha Court vehicles seized or taken into custody, despite the media and public suspecting Usha Court Sulfas;.

7. There were police patrolling in the City areas prior and posterior to, but no interception of the assailants during the journey to and return from the killings..

8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an Extra-Constitutional authority and used as the executioners, the modus operandi being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send advance team to locate and survey the house, then to send armed and masked persons to shoot them dead or take them away and kill them secretly and throw the bodies somewhere,. In this case killing was on the varendah of the house. .

9. There was general resentment and decry against the Unified Command Structure/ Chief Minister..

10. There was connivance of SULFA; and surprising omission to make any SULFA an accused, despite clues..

11. The investigation did not commensurate with the seriousness of the crime perpetrated..

12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.

13. No condolence message was sent from the Govt. of Assam to the victim family.

14.No ex-gratia/compensatory payment was made by the Govt. of Assam.in this case.

15 That in all the cases, including this case, there wass remote- orchestrated Ulfocide, death penalty having been imposed on the victims for "status offences," of being members of ULFA or ULFA- related families..

16. That from evidence of this case, as in all other cases, "remote orchestration" of "Ulfocide" is deducible These common characteristics, along with evidence, prove. beyond reasonable doubt, remote- orchestration of "Ulfocide" from "Home Ministry" level, through Police-SULFA nexus using some Sulfas as the striking arms or executioners. The authority must be held liable and be dealt with according to law.

This conclusion is based on the similarities in all the cases. in almost all respects, which could not be so, unless there was remote- orchestration from the Home Ministry. The "kill and get killed" theory applied to several SULFA leaders..

Questioned on the two cases, namely, that of killing of Dimba Rajkonwar and that of Dr.Dharanidhar Das and family, Shri G.M. Sroavastava said (A, 88) "Normally police compares the cases on the basis of *modus operandii* and circumstances."

On the basis of the above evidence, it is considered reasonable to pinpoint the responsibility as the persons involved directly or indirectly in the killings, on the Usha Court Sulfas, namely, Shri J.K.Mahanta, Shri Bhaskar Sarma, Shri Dibakar Deka, and such other Sulfas as joined them in commission of the dasterdly killings, and the concerned Guwahati (City) Police officers,who excited, helped.or facilitated the commission of the killings of the family members of ULFA Shri Putul Teron @ Babul Ingti on 7;3;99 The Police hierarchy, up to the Home Minister would also be responsible for remoe-orchestration and by the principle of 'respondeat superior',

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom.. to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months, and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The Constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union.in the State of Assam has been "in aid of the civil power of the State."In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. The same examlle applied to the holding of National Gams with roaring success and acclaims.This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of mormalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting

of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed for restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

. The Army Districts. In para 15 we discussed the structure and functioning of the Unified Command Structure. In course of the Commission's hearing sessions in the Upper Assam district of Sibsagar it was learnt that the Upper Assam districts of Tinsukia, Dibrugarh, Dhemaji, North Lakhimpur and Sibsagar have been declared as Army districts and that, as a result, Army has been operating in those districts. In so far as the declaration is concerned, this Commission has nothing to do. As the Commission has to enquire into some criminal cases of some of those Upper Assam districts, the Commission has to see whether this declaration had any impact on those cases. The Commission proceeds on the basis that during the period from 1998 to 2001 also similar declaration could have been there in those districts, and the Unified Command Structure and the Armed Forces Special Powers Act were necessarily in operation in those districts. If that was so, what were the functions and powers of the Army thereunder would be relevant in the context of prevention of such killings. We have already discussed this, including the leading case, in para 15. The Armed Forces (Assam and Manipur) Special Powers Act, 1958 was amended by the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972; and it is now "The Armed Forces in the State of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram Special Powers Act," and it is extended to all these North Eastern States. By section 4 of the Amendment Act 1972, section 3 of the principal Act stands substituted, namely,

"3. If in relation to any State or Union Territory to which this Act extends, the Government of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area."

The Armed Forces Special Powers Act does not enable the Armed forces to supplant or act as substitute for civil power after a declaration has been made under section 3 of the Act. The power conferred under Clause (a) of section 4 of the Act can be exercised only where any person is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the

carrying of weapons or of things capable of being used as weapons or firearms; ammunitions or explosive substances. In other words, the said power is conditional upon the existence of a prohibitory order issued under a law, e.g. under the Cr.P.C. or the Arms Act, 1959. Such prohibitory orders can be issued only by the civil authorities of the State. In the absence of such a prohibitory order, the power conferred under clause (a) of section 4 cannot be exercised.. Similarly, under section 5 of the Act, there is a requirement that any person who is arrested and taken into custody exercise of the power conferred by the clause (c) of section 4 of the Act shall be made over to the Officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest .

Maintenance of public order involves cognizance of offences, search, seizure and arrests followed by registration of reports of offences (F.I.R.s), investigation, prosecution, trial, and in the event of conviction execution of sentences . The power conferred under the Act only provide for cognition of offence, search, seizure and arrest and destruction of arms dumps and shelters and structures used in training camps or as hide-outs for armed gangs. The other functions have to be attended to by the criminal justice system. Constitution and the laws in carrying out each and every function of the machinery. Thus, the functions in aid of civil power have been ruled by law and not by discretion. The deployment of the Armed forces of the Union in a State does not in any way deprive the people of the disturbed area of the State of their fundamental rights to life and liberty. Any violation of such rights under such provisions would not countenance violation of Constitutional and human rights of the people by the Forces deployed in aid of civil power, nor would it prevent fake encounters from being murders, or a crime from being a crime, punishable under the law.

Throughout evidence the official witnesses say that they kill the boys in self defence. The idea varies, and some seem to be of the view that Ulfas are to be shot at sight. Fake encounters are often reported in news papers. Almost always some obsolete weapons/ammunitions and/or some Ulfa related papers are put near the dead bodies. obviously for post mortem justification of the killings This will not stand on the way of the spade being called a spade...

(2) The long term measures are meticulous observation of the provisions of the Constitution of India by the Government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the long term measures may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" Sukracharya's Dandaniti is based on danda , meaning, punishment. Ancient sages said that without danda matsyanyaya will prevail and the strong will devour the weak, even the sacred prasada of the yajna will be

swooped at by crows. Danda keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over these rights by the killer, and over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner.. While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society according to their capacity. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea, their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, but using their services as "guides", "spotters", trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the Insolvency principle is not applicable to criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the citizens was effected, and by those whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will surely be an entirely different matter.

(F) Any other matter related or relevant to the inquiry

Under this term the Commission would like to deal with the question of compensation, *ex gracia*, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the patriarch of the family, his wife and son have been shot dead under the circumstances discussed in the case. The information has been that Putul Teron @ Babul Ingti has also since been killed. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, Assam and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay for the benefit of the family, a sum of Rs15,00,000 (Rupees fifteen lakh only, to be deposited into a non-withdrawable family fund, only the usufruct being withdrawn by the Deputy Commissioner of the district and distributed to the surviving members of the family of Haren Teron on inheritance principle, forthwith. More than seven years have already elapsed and it brooks no farther delay.



SMTI SUKURI BORO AND SHRI KANTA RAM BORO KILLING CASE

Sonapur P.S. Case No 45/99.

Date of Occurrence 8.3.99

By this Commission's order dated 12.3.2007, by virtue of the authority conferred on it by the Government of Assam's Notification Nos. No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No. No.PLA 331/2005/1 dated 22.8.2995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case. the following terms of reference, and any other related and relevant matters with recommendations, if any, namely:

- “(a) Circumstances , in each case, leading to the killing of its victim(s).
- (b) The identity of the killers, and their accomplices, if any
- (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
- (e)To make recommendations to prevent recurrence of such killing(s)
- (f) Any other matter related to or relevant to the purpose of this inquiry;”

(A)Circumstances leading to killing of Smti Sukuri Boro and Shri Kantaram Boro.

An ejahar was lodged by Smti Ahalya Boro wife of Shri Bipul Boro at Sonapur outpost dated 8.3.99 at 11.45 A.M., to the effect, that day at about 4 A.M. when her husband's grand parents and his mother were present in the house, about 6/7 unknown armed miscreants, fired upon them at random seriously wounding her mother-in-law Smti Rambha Boro, and killing my husband's grand father Shri Kanta Boro and his grand mother Smti Sukuri Boro and left the place.. She herself was in a neighbouring parental house. The neighbouring villagers came and informed her.. Her mother-in-law Smti Raambha Boro, being seriously wounded, had gone to the hospital via the Thana. The FIR was sent to Khetri Police Station. from Sonapur Outpost.

In all probability this was the second killing by the same group of persons that caused another killing earlier. Normally none would wait till wee hours of the morning to commit a secret killing.

The post-mortem examination showed the following injuries on the dead bodies. On the dead body of Smti Sukuri Boro

1.. Bullet entry wound size 1 cm x 0.8 cm with irregular and inverted margins surrounded by abraded color situated on the anterior chest wall left side 9 cm left from midline and 10 cm below the supra sternal notch. The bullet passed through the anterior chest wall plueura left lung, heart, right lung and give rise to exit wound on the posterior

chest wall 1 cm x 3 cm with lacerated and everted margins situated 2.5 cm right from 3 vertebral line and 8 cm below the 7th cervical spine.

2. One lacerated injury present on the medial side of the left knee joint size 2 cm x 1 cm x muscle deep. According to the doctor, the death was caused by shock and haemorrhage resulting from the ante mortem homicidal injuries On the body of Shri Kantaram Boro

1. Bullet entry wound size 1 cm x 0.8 cm with irregular and inverted margins surrounded by abraded color situated upper part medial side of the left arm, the bullet passes through the skin muscles, pleura, left lung and give rise to exit wound. No ligature mark detected around the neck.

3. Bullet entry wound size 1 cm x 0.8 cm with irregular and inverted margins surrounded by abraded color situated on anterior chest wall 1 cm left from midline and 12 cm below the supra- sternal notch., the bullet passes through the anterior chest wall pleura, left lung, heart, stomach and posterior abdominal wall giving rise to exit wound size 2 cm x 2 cm with lacerated and everted margins, situated 1 cm right from midvertebral line and 30 cm below the 7th cervical spine. According to doctor, the death was due to shock & haemorrhage as a result of rifled firearm injuries which were antemortem and homicidal in nature.

H.W.V. Cox in his Medical Jurisprudence and Toxicology 7th ed, vii: The modern nitro-cellulose type propellants that are now far more commonly encountered. Medico-legal questions in relation to firearm injuries. The kind of firearm used is determined by the size, shape and the composition of the bullet. The examination of the cartridges that are used. A modern criminalistics laboratory with all the modern imaging facilities is a pre-requisite in modern investigations. Infra-red photography for examination of the clothing is a pre-requisite now a days. The furnitures and fixtures and the position of the weapons and the posture of the injured at the time of firing have to be considered. The victim's posture may have changed during the killing. In a rifled weapon wound the entrance wound is usually inverted and the exit wound is everted. However, the entrance wound may be everted if it is a close discharge, and the exit wound may not be everted, if there is firm support of the skin.. The calibre of a rifled weapon cannot certainly be deduced from inspection of the entrance wound. The most important differentiation is between those caused by smooth bored from those caused by rifled weapons. Contact and very close discharges produce burns, very close blackening of powder or oil and powder tattooing where black powders are used, of course not so much with smokeless propellants.

Killing in law amounts to accelerating the victim's death. Since we are all fated to die at some time, every instance of killing is an instance of accelerating death, and even if death is accelerated by as little as five minutes, it is still a criminal homicide. So it is no defence to a person who has killed an old person to say that he was already nearing death.. In this case Shri Kantaram Boro was 90 years old, and Smti Sukuri Boro was 80 years old.

(B) The identity of the killers, and their accomplices, if any

It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the

perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea or negligence*. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous. The killing of Shri Kantaram Boro, Smti Sukuri Boro and wounding of Smti Rambha Boro was secret not as to the place of killing/wounding, but as to the identity of the killers and their accomplices, if any. The identity of the killers and their accomplices have to be determined on basis of the evidence on case records. We discussed the meaning of "secret". In para 7 of the Introductory Part 1. Identification of the killers has to proceed on the basis of investigation and evidence. wherefrom, in this case, two shortcomings appear from records, namely, that only routine and random investigation proceeded; modern methods were not used; police dogs were not engaged, to sniff out the culprits; and foot or finger prints were not taken. Investigation was perfunctory, as important evidence were not taken promptly or not at all..

P.W.. 2. Smti Rambha Boro deposed that on 8.3.99, herself, aged about 50 years; her father Shri Kantaram Boro, aged about 90 years; and her mother Smti Sukuri Boro, aged about 80 years, were sleeping in their Belguri, Village, were getting up to satisfy call of nature at about 4 A.M. they heard the sound of their door being opened. Halting, she saw first two armed persons entered, followed by two more and then by so many of them, numbering 20, first asked her how many persons were in the house, on her answering only three, herself and her parents, they enquired about her son Nirmal Boro, being told that he left his house long back and being without contact, they asked about her elder son and then the younger son, who was then in jail since a week back, they were made to sit at the varendah and she called her father thinking he may also be asked. As soon as her father arrived, the armed persons indiscriminately fired at them First her father was shot by automatic weapons, every shot producing a flicker. then her mother was shot, both fell down, and then she was shot and she fell down unconscious,. She regained consciousness after about two hours and felt extremely thirsty and went to the neighbouring house for water and narrated the story, they then informed the villagers who arrived, by then it was dawn. The first two armed persons appeared to be 45/50 years old and spoke in Assamese. Those standing behind them appeared to be boys. That night there was no electricity in their house and they had to burn a kerosene lamp.

The scene haunted her and she went on changing houses in vain. The then Govt did not give them any financial help, they had to bear all expenses. Rambha Boro has since been running a cloth shop at Digaru Tinali about 2 kms away from her house, and she used to sit there. No ULFA used to come to her shop. The three local Sulfas who are their relatives, and who stayed at the Sonapur SULFA camp of 10/12 of them,. used to come now and then, They had since been living in their own houses. They are Shri Siddheswar Taro, Shri Jogen Boro and Kiran Boro The army and police used to frequent their house and about a week before the incident, they came and took away her younger son Shri Pradip Boro and detained him in jail. That had saved him.. They used to come on Independence and Republic days, and on Lachit Dibash. and tell them that their boys were handsome and ask. would it not be bad if they were killed?.

P.W. 1, Shri Nirmal Boro was, at the time of the incident, not at home, but was working in Goalpara district as ULFA, and learnt about the incident the next day that

the killing was by Secret killers.. He joined ULFA in 1989 and surrendered in 2000 and thereafter his mother told him that the group of armed miscreants covering their faces with black cloths entered the house and inquired about him, and being told that he was not at home indiscriminately fired upon them and left.. His mother did not see the vehicles as the approach road from the trijunction to their gate, about 500 meters, was not motorable. He did not think that the killing was a sequel to ULFA-SULFA conflict which was not there. He joined the ULFA, seeing the plight of the Assamese people despite its past history and resources demanding sovereignty, socialism and fundamental right to resources of the State as has been protected in China; that Sovereignty demand of the NDFB could be reconciled. If Assam be sovereign, Bodoland being its part, will also be; that he thought of surrendering as when cadres were killed the organisation could not render any help, and when family members were killed, the organisation could not help or console them; and that he arranged his surrender through his elder brother and did it before the then Chief Minister Shri Prafulla Kuman Mahanta. He corroborated that the army and police frequented his house in search of him, and that they pressurised the family members to make him surrender and even sent his elder brother Shri Pradip Boro twice to jail for no offence.

P.W. 3 is the Village headman Shri Katiram Hira residing half a km. away, received the information early morning, telephoned to the police station, saw the two dead bodies and advised Smti Rombha Boro to be taken to hospital for treatment. When police arrived, he accompanied them, and showed what happened. Police recovered 9 empty rifle cartridges from the place of occurrence. He accompanied police in taking the dead bodies for post-mortem examination and back to the village and was present at the cremation. at 8 P.M. Some Assamese speaking army men earlier used to ask him about Nirmal Boro and whether there were other ULFAs in his area.. He had been the Gaonburha since 1972 and did not know how many persons from his area joined the ULFA since then. The army and police used to come there frequently, particularly on official function days. He knew the three local Sulfa boys and saw the Sonapur Sulfa camp which had several houses wherein both married and unmarried persons numbering 35/40 camped..

N.W Shri Pradip Kumar Bora, I/C Sonapur outpost received oral information of the incident at about 7.30 A.M. of 8.3.99 when two persons brought injured Smti Rambha Boro to the outpost and narrated the story. Sending her immediately to the Guwahati Medical College Hospital and making G.D. Entry No. 291, with his staff immediately proceeded to the place of occurrence, about 7 kms away, and arriving at 7.40 A.M., he examined the place and sent the two closely lying dead bodies of Smti Sukuri Boro and Shri Kantaram Boro at the varendah. for post-mortem examination at the Guwahati Medical College hospital.. Meanwhile the O.C. Khetri P.S. also arrived and they examined the place of occurrence and recovered 8 Nos of 9 mm empty cartridges, 1 No. live cartridge and 2 bullet splinters strewn on the courtyard and one black coat in the wearing of Kantaram Boro entered those in a seizure list in presence of the witnesses. They examined 13 witnesses u/s. 161 Cr.P.C. who stated that about 6/7 persons armed with pistols came and enquired about Shri Nirmal Boro and not finding him, opened fire on the three persons indiscriminately killing instantly Smti Sukuri Boro and Shri Kantaram Boro and seriously injuring Smti Rambha Boro who fell down unconscious, left the place. The two dead bodies were sent to Guwahati Medical College Hospital in a

Police dead body carrier van with policemen. At about 11.45 A.M. Smti Ohalya Boro, daughter-in-law of Smti Rambha Boro lodged an F.I.R. at the place of occurrence. Thereafter they contacted some V.D. personnel who also could not give any clue as to the culprits. As the miscreants were said to have parked their vehicles at Ghagua, police thought that they might have come by the Amsong T.R. road and the Chandrapur road had some broken bridges, they returned by the Amsong T.E. road and on way contacted some people and left instructions to ascertain and inform facts if found. The I/C arrived Sonapur by 12.20 P.M. Shri Pradip Boro joined Sonapur outpost in June-July 1997 and continued there till 31st July 1997 and was again brought back to Sonapur in 2004. So he was expected to know the place and its problems. During the fateful night of 8.3.99 he was somewhere at Burnihat carrying out some operation which he did not remember. Army used to plan their own operations, only took police personnel when they needed. There were then 2 hard core ULFAs, namely, Shri Nirmal Boro and Shri Pulak Dutta and one female cadre Smti Juli Barua within his outpost jurisdiction. There were some other local Ulfas and some used to come from Mayong and Chandrapur sides. He carried some anti-extremist operations and captured some, but did not kill any ULFA. As regards the nature of instructions received from above, for him the S.P. was not to be slack against extremists, and to act according to law. He did not remember whether he asked the ULFA family members to bring back their ULFA wards back to main stream or forewarned them that failure to do so would not be good for the family. He visited the house of Shri Nirmal Boro and knew him to have been action commander, but did not know his mind as to surrender. Some surrendered Ulfas from Sonapur area he knew were Shri Siddheswar Taro, Shri Jogen Boro, Shri Kiran Boro and Shri Pradip Talukdar. There is no record of the empty cartridges being sent for forensic/ballistic examination. He could gather no information about the vehicles used by the miscreants, except that the vehicles were parked at Ghagua, about a km away from the house though the road was gravelled, but motorable up to its gate. He asked the Gaonburha Shri Baikuntha Nath who also could not say anything. Witness denied the suggestion that he did not take appropriate steps to ascertain the vehicles. He said that the arms used were pistols, but could not say if 9mm bullets could be fired from Carbines. He did not remember how the weapons were described by Smti Rambha who saw the firing till she fell unconscious. The letter dated 9.3.99 by the S.P., SOU (Special Operation Unit) addressed to the S.P. City Shri Bhaskar Jyoti Mahanta in connection with this case and hence, it was in the C.D., but he denied the suggestion that it was in connection with Nirmal Boro's house. Required reports were sent, but those did not refer to the SOU's note. Replying the question whether Nirmal Boro was inclined to give up ULFA even before the incident in the affirmative, witness referred to the statement u/s. 161 of Nirmal Boro to that effect and that led to certain differences in the ranks, and for which some hard core Ulfas might have caused this incident. and that his note was confirmed by Nirmal Boro himself in his statement u/s. 161. He asked other Ulfas but they did not say anything of the kind and denied their own involvement. He admitted that the entry dated 12/12.2000 was the last entry made by him in the case diary till he was transferred and retransferred, and explained that it was because he had to deal with large number of other cases... The I/C asked some Ulfas as to the hypothesis of the incident being caused by the Usha Court Ulfas in retaliation of the grenade attack, but he says, no ULFA agreed with it, however, he did not examine any Usha Court resident ULFA. He

denied the suggestion that he did not really try the Sulfa retaliation hypothesis. He denied the suggestion that his hypothesis of some other group of Ulfas having caused the murders was a figment of his imagination and the statement of Nirmal Boro to similar effect was his(I/C's) own concoction. He also denied the suggestion that the entire incident was caused by the police using the Sulfas, with those of Usha Court, for its execution. ...

N.W. Shri Haliram Bora, then O.C, was informed of the incident in the morning of 8.3.99 by the I/C Sonapur outpost through VSF. He immediately rushed to Sonapur outpost and found that the I/C already left for the place of occurrence, and he also rushed to the place of occurrence and there he found that the I/C made arrangement to send Smti Rambha Boro who was seriously injured to be sent to the G.M.C.H. for treatment. He instructed the I/C to arrange the dead bodies for post mortem examination and accordingly those were brought to the Sonapur outpost where I/C performed the inquest, by which time the S.P Shri Bhaskar Jyoti Mahanta also arrived at the outpost. A seizure list of the articles recovered from the place of occurrence was already prepared in presence of the public..Statements of the people present at the place of occurrence were recorded by the I/C at the place of occurrence and the I/C performed the inquests over the bodies and sent to G.M.C.H for post mortem examination. He supervised the investigation of the case and gave all necessary instructions in regard thereto According to the witness Khetri P.S. was informed of the incident by the I/C Sonapur outpost in the morning of 8.3.99 the modus operandi of the two cases were very similar, the killers came by vehicles, called the inmates of the house and killed them. The family of the other case was of Shri Putul Teron @ Shri Babul Ingti where three persons were killed and this case was that the family of Shri Nirmal Boro @ Shri Tirtha Gogoi. The incident in the family of Nirmal Boro was preceded by that of the family of Shri Putul Teron @ Shri Babul Ingti and that on its turn was preceded by the incident in the Usha Court and that it could have been a retaliatory action In so far as he remembered and it was told to him as he remembered and as reported to him by Shri Pradip Kumar Bora, Nirmal Boro surrendered after the incident and disclosed that he was contemplating surrender even before the incident as a sequel to some differences with ULFA leadership suggesting thereby that the incident could have been caused by some other ULFA group.

The S.P. asked the O.C. about the possible escape routes from the place of occurrence and was shown the route leading to Chandrapur. Both of them travelled together by that route to Digaru via Karkari and then to Chandrapur and reaching Chandrapur, the S.P. allowed the O.C to return to Khetri, and he did so via Guwahati..The witness said that actually the then Addl S.P (City). Shri J.C. Barman visited the place of occurrence on 9.3.99 with the I/C Sonapur outpost The O.C said that they could not have any clue as to the culprits, but mentioned about a statement made by Shri Nirmal Boro, as reported to him by the I/C. Sonapur outpost said to have indicated some internal rift. However, in cross examination he admitted that he did not have any such information before the incident, nor did he meet Shri Nirmal Boro after he surrendered though he once saw him from a distance..shri Nirmal Boro examined himself but did not make any such statement before the Commission. When the O.C visited the Place of occurrence, he was told by the people that the miscreants parked their vehicles on the road near a school about 100 metres away from the victim house..With his party O.C. visited the parking place on the gravelled road, but did not minutely examine

whether tyre marks were or were not there. They found nothing there to be seized. The gravelled spot was 12/13 kms from the National Highway 37. He visited the house of Nirmal Boro before the incident in connection with a case of his younger brother who was wanted in a case. Since quite some time before the incident Nirmal Boro's name was recorded in a Register maintained by the O.C on basis of discussions in crime meetings. There were no instructions from higher authorities to induce the family members of Nirmal Boro to make him surrender and join the main stream. Strangely enough, the O.C. came to know about the Basistha P.S. case No. 58/99 only after a week of its occurrence and did not ponder over the similarities of the two cases and buried himself only with his Khetri case.. On the other hand, as expected, no clue was found till he was there..

N.W, Shri Jogen Chandra Barman the then Addl. S.P.(City) received the information of the incident most probably from the I/C Sonapur outpost on 8.3.99, and did not remember whether he visited the place of occurrence, but remembered to have instructed the I/C to submit the case diary; on 23.4.99; and the case was treated as S.R. He received the supervisory note dated 9.3.99 of the S.P. on both the Basistha P.S. case No 58/99 and Khetri case No, 45/99, but he did not instruct the two I.O.s to sit together and consult the investigation process, because that case itself was on investigation and it was endorsed to that I/O.s. As he was retiring w.e.f. 31.3.99, no file was put up to him till then after the S.P.'s instruction., nor did he make any enquiry about it. He was not aware of the existence of the Sonapur Sulfa camp at that time.

N.W. Shri Swapan Kumar Dasgupta, then D.S.P. Dispur Division received the information about the incident in Kshetri P.S. Case No. 45/99 through VSF from the I/C. Sonapur Outpost while he was supervising the investigation of the Garchuk outpost case under the Basistha P.S. case No. 58/99, both occurring the same night of 7-8.3.99. He supervised the investigation of the case and gave all necessary instruction in regard thereto. According to the witness the *modus operandi* of the two cases were very similar the killers came by vehicles, called the inmates of the house and killed them. The family of the other case was of Shri Putul Teron @ Shri Babul Ingti where three persons were killed and this case was that he family of Shri Nirmal Boro @ Shri Tirtha Gogoi. The incident in the family of Nirmal Boro was preceded by that of the family of Shri Putul Teron @ Shri Babul Ingti and that on its turn was preceded by the incident in the Usha Court and that it could have been a retaliatory action In so far as he remembered, and it was told to him as he remembered, and as reported to him by Shri Pradip Kumar Bora, Nirmal Boro surrendered after the incident and disclosed that he was contemplating surrender even before the incident as a sequel to some differences with ULFA leadership suggesting thereby that the incident could have been caused by some other ULFA group. According to him, it was notable that the *modus operandi* in both the cases were similar -the killers came by vehicle, called the victims from inside their houses and then killed them; and that the family of the other incident was that Shri Putul Teron @ Babul Ingti where three persons were killed, and in this case i.e., the Kshetri P.S. case No.45/99, the family was that of Shri Nirmal Boro @ Shri Tirtha Gogoi, a member of the ULFA. The former incident preceded the latter. He instructed the I/C to observe the tyre marks at Ghagua where the vehicles were parked, but the I/C informed that the road was hard-topped and no tyre marks were there and the type of the vehicle could not be ascertained.. He instructed the I/C to meet the Gaonburha and he himself also met him but he could not give any information. As he believed that every crime must have a motive,

he instructed the I/C to ascertain; and he himself also tried, but all in vain. The Dispur Division covered the Dispur, Basistha and Kshetri Police stations. and he was there since 1998. He had been in Guwahati for quite some time in different capacities till the first part of 2000. He knew that Nirmal Boro's name was in police records since 1998, and he could be called an ULFA activist, not as hardcore ULFA. He himself did not undertake any operation in Nirmal Boro's house, but he instructed the O.C. and the I/C. to visit his house, enquire his whereabouts and try to bring him back to the mainstream, and they visited his house accordingly, but there was no information about his visit prior to the incident. He did not receive any information that Nirmal Boro was inclined to surrender, but received it only after he surrendered. He did not visit the place of occurrence at all and did not supervise the investigation of this case. He said that for the dog squad to work, there must be something left behind by the culprits wherefrom the dog squad can begin its work, and he did not know whether anything was left behind in this case so as to enable the dog squad to work. This case, according to witness was supervised by the Addl S.P.(HQ) and the S.P. The distance between Haren Teron's house and Sukuri Boro's house would be about 30/35 kms. There was a SULFA Rehabilitation camp of 12/15 Sulfas when Lt. General S.K Sinha was the Governor of Assam, near Kshetri P.S. but it was short-lived. Though not in the form of a syndicate, there was considerable coal business at Basistha controlled by the Sulfas, including those from the Usha Court. In fact earlier another person was controlling the Basistha coal business and the Sulfas ousted him and brought it under their control. The police hypothesis that some other Ulfa group could have caused this incident was, the witness said, based on consideration of all angles. He did not remember whether he issued any instructions to O.C and I/C to examine Usha Court Sulfas, and he did not ask the I/C to ask the P.S.O.s of Usha Court SULFA occupants who reportedly told the I/C the story that because of the Usha Court incident earlier evening the Usha Court Sulfas, being afraid, kept themselves indoors throughout the night, to ask the Usha Court SULFA occupants themselves where they were during the fateful night. He said that the I/C would be appropriate to answer the question...

N..W.Shri Bhaskar Jyoti Mahanta, then S.P., Guwahati City, received the information telephonically from some officer whom he could not now recollect, and considering it to be a "sensational case" he instructed the different police stations to put up road blocks and barricades so as to intercept the fleeing vehicles and culprits. He issued two consecutive self-explanatory supervisory notes, the first on 9.3.99 and the second on 15.3.99. He visited the place of occurrence a day or two after the incident, took stock of the situation, interacted with the villagers and neighbouring places and discussed with the police officers of the thana and the outposts. He was aware of the SULFA camp near the Sonapur outpost and instructed the O.C. and the I/C to keep an eye on its inmates. There were guards, not P.S.O.s for the inmates. The CD did not contain any record of examination of Sulfas Siddheswar Taro, Jogen Boro and Kiran Boro. Some 3 or 4 Sulfas, who were sources, were sheltered in the Gauhati Police Reserve, along with other sources. The I.O. did not specifically reply to his supervisory notes, but that was due to there being too much work for too few officers. He was not aware that some victims were lifted and brought to Usha Court, confined and fatally tortured in its different rooms...

Before testing the alternative hypotheses, it may be better to note the distinguishing features of the Basistha and Kshetri cases. The distance between the two places of occurrence has been stated as 30/35 kms which could perhaps be covered within as many

minutes. As in the Basistha case there was a God's witness, so also in the Kshetri case Smti Rambha Boro survived to tell the story to the world, of course, as she saw her parents brutally shot dead, and she was also almost fatally injured. In Basistha the concerned Shri Babul Ingi did not live to depose before the Commission, while in Kshetri Shri Nirmal Boro has deposed.. In Basistha the number of assailants varied between 5/6 and 10/12, while in Kshetri first two 2 persons, aged 45/50 and another 2 persons, and then the boys, altogether 20, were seen. The similarities between the two were, in both places there were outside Sulfas, than those of the Usha Court.. In the City 3 or 4 Source Sulfas were admittedly there who could in all probability join the killers. The SULFA camp pf Sonapur also had 10/12 Sulfas.some of whom might also join. The modus operandii was absolutely similar. both in the wee hours of the morning, entering the houses, calling the inmates , asking them how many and who were they, make them sit on the varendah and shoot them one by one..Nature and laxity of police investigation were similar, failure to find a clue and bringing the case to a premature end by filing the F.R The identity of the killers and their accomplices, if any, has to be on the basis of the hypothesis beyond reasonable doubts..

From the above evidence three hypotheses seem to emerge, namely, it could be caused, by some other ULFA group than that of Shri Nirmal Boro, or by the Sulfas of Usha Court and of Guwahati Police Reserve and of Sonapur SULFA camp, in retaliation, or as State police plan executed by the Police -Sulfas of Usha Court nexus..

The first hypothesis, which was suggested only by the I.C Shri Pradip Kumar Bora, does not stand scrutiny inasmuch as Shri Nirmal Boro @ Tirtha Gogoi reportedly having been in charge of Guwahati, it was not likely for other Ulfas to have killed their colleagues's family mmbers..No ULFA would normally welcome such a fate to his own parents and brethren.Nirmal Boro himself denied any rift between ULFA and SULFA. We may reasonably rely on his statement. Among the witnesses, the I/C only suggested this hypothesis without factual foundation. There has been no evidence whatever of there being any antecedent rift between the ULFA and Nirmal Boro, who.has not stated so after his surrender.The modus operandii and the facts and circumstances do not tally with those of the ULFA killings. Hence, it is rejected. ..

The Usha Court Sulfas hypothesis figured in depositions.it having almost suggested itself.Shri Bhaskar Jyoti Mahanta spoke about crymogenics, also instructed examination of the Usha Court Sulfas and their security personnel. It seems what were the Sulfa camps in other towns, Usha Court was that for the Gauhati City. The security prsonnel at Usha Court were examined by Shri Swapan Dasgupta and also by Shri Mani Saikia in another case. They were in symphony. Because of the grenade attack in the evening, they were afraid and none went out during the fateful night.However, No Usha Court Sulfa could be examined. The Nalbari Sulfas also, in another case, said, because of death of a Sulfa previous day, none went out during the fateful night.The protected Sulfa element had its penumbra on the evidnce.The news items referred to in evidence were, no doubt, not contemporary to the incident, but published several years posthumously, though interest in the subject matter could not be said to have been stale by then.The fact that the two killings at Lakhra and Sonapur closely followed the Usha Court grenade attack, and both involved two Ulfa families were emphasised by Shri Nekibuzzaman, the learned counsel for the applicant, who also pointed out the similar killing cases closely following the killing of Sulfa Shri Tapan Dutta. Yet it is a trial by

the Commission. We have to remember the logical fallacy of *Post hoc ergo propter hoc*. After this, therefore, on account of this. This is fallacious. Soon after the moon was seen in the sky, the child died. Therefore, the rising of the moon is the cause of the child's death. That will be erroneous. Things go on happening in course of time. Some follow others. That itself, without more, does not set up any causal connection and does not probabalise the entire activities, namely, being equipped with such sophisticated firearms, the personnel as described in evidence, the vehicles used, in the journey to the place of occurrence, at the dead of night, without being detected by police, and the *modus operandii*. Proximity of time alone is insufficient.

The State Police- Sulfa nexus hypothesis may now be tested. This will mean all the elements discussed in Usha Court Sulfa hypothesis plus all those factors attributable to the State in this context. which suggest it to have been part of the State plan of Ulfocide, that is, the deliberate secret killing of the Ulfas and members and relatives of their families, using some Sulfas as striking arms or executioners. In fact, in this case, that something more is there, and that is, the natural probability of retaliatory action by the Usha Court Sulfas and their outside colleagues, against the grenade attack, if attributed to the ULFA, considered in light of the evidence in the case records, as truly interpreted..

There was one eye witness to the killings. She was Smt Rambha Boro, mother of Shri Nirmal Boro, who, before she was shot and felled down, saw the killings of her parents, as if a God's witness. She saw the first 2 persons, aged about 45/50 years with pistols in hand, who shot dead her parents Shri Kantaram Boro, aged 90 years, and Smti Sukuri Boro, aged about 80 years, and then shot at her. They were followed by 2 more and other boys, total 20. She told her son Nirmal Boro that the assailants were wearing black dresses and covering their faces with black cloths and "gamochas" and that they were speaking in Assamese. The Usha Court Sulfas, as in evidence, did not amount to 20.. We learnt about Shri J.K. Mahanta, Bhaskar Sarma, Dibakar Deka and Rinku Choudhury (since deceased) Of course, there were ¾ source Sulfas at Guwahati Police Reserve, as the S.P. said. Some outside Sulfas were also there cordoning off the Usha Court after the grenade attack. It is in evidence that there were 3 or 4 Sulfas as sources in the Guwahati Police Reserve. Civil-dressed policemen and Sulfas were reportedly brandishing their sophisticated weapons. Smti Rambha Boro told Nirmal Boro that the assailants wore black dresses and covered their faces with black cloths and Gamochas. and they spoke in Assamese. The timings were also significant. Normally Sulfa assailants plan a killing around midnight, That was done in the Basistha case. Thereafter they had to travel 30/35 kms to Sonapur, covering in as many minutes.. Perhaps some local Sulfas may have joined them there, swelling the figure to 20. The killing at Kshetri was around 4 A.M. i.e., before it was dawn. The *modus operandii* were exactly the same in both the killings, entering the house, asking them how many people were there and who were they, calling and making them sit on the varendah and then shooting them dead.

Shri J. K. Mahanta said that after the grenade attack, his wife was recuperating after a knee operation and he was busy removing her to another room. The attack could have been towards him. The term of reference includes killers and accomplices, if any.. Uncontradicted media reports and oral depositions may not be ignored. Bhaskar Jyoti Mahanta, the thn S.P, said that at the time of the incident the media suspected the Usha

Court Sulfas. Accordingly, he instructed that the Usha Court Sulfas should be examined, along with their security personnel. In fact, the Usha Court Sulfas were not examined at all. The S.U. personnel said that because of the grenade attack in the evening none went out during the night. This was in symphony with the police version, and also self-exculpatory. In matters of general public importance news items, as the Supreme Court held, may be looked into, though herein they relate more to the grenade attack incident rather than directly to the killing incidents. However, the depositions based thereon could not be said to have been shaken, far less demolished in cross-examination. Shri Bhaskar Jyoti Mahanta mentioned that the media suspected the Usha Court Sulfas to be responsible for the killings. That means media reports were contemporaneous.... News items themselves may not provide the foundation for holding one criminally liable. However, the Supreme Court said that when the matter is of public importance the Court can look into it. Looking into them, in public interest, it is seen that what have been described in the news items relating to Usha Court grenade attack incident have not been contradicted by any one. In cross examination the statements of P.W. 1 based on those items were not shaken or demolished. Bhaskar Jyoti Mahanta mentioned that media suspected the Usha Court Sulfas. The attribution of the grenade attack to the ULFA has not been doubted or challenged in evidence. Armed police in civil dress and Sulfas brandishing arms proceeded openly to their destination when the State Police hierarchy remained a mute onlooker. Presence of Usha Court and outside Sulfas and civil dressed policemen, as depicted, could not be disbelieved. *Ex nihilo nihil fit*. Out of nothing nothing comes. Had nothing happened, the media reports would not have been there. The reports remained uncontroverted. The deposition of Shri Lachit Bordoloi could not be demolished or shaken. On the other hand, all these factors suggest it to have been part of the State plan of ulfocide, that is, the deliberate secret killing of the Ulfas and members and relatives of their families, using some Sulfas as striking arms or executioners. In this case, besides proximity of time, something more is there, and that is, the natural probability of retaliatory action by the Sulfas against the grenade attack if attributed to the ULFA. With this natural probability of retaliatory action on the part of the Usha Court Sulfas and their Sulfa colleagues. For all these reasons this hypothesis may be beyond reasonable doubt.

From the evidence on record it is considered reasonable to believe that the R.P.G. attack was natural to have been attributed to the ULFA, resulting in an intense impulse for retaliation. The Post grenade attack scene depicted in evidence lead to the finding of an retaliatory attack on those who could be calculated to have carried it out. This ought to have been restrained by the sober elements in the Sulfa as also by those who were in charge of law and order. Nothing happened in that line. Even at that stage if the police functions were performed where the armed men were proceeding could have been found out and intercepted. Absence of such steps only would lead to the conclusion that what was going to happen would be to their liking. The reasons are obvious. ULFA fobia had its effect on Govt activities. Written appeals were published by the Chief Minister in Sahitya Sabha and other literary journals. It became part of the police-military duty to visit ULFA families and pressurise relatives to bring their ULFA wards back to the main stream by surrender. Army and security forces used to forewarn the relatives that failure to bring their wards back to the main stream would not be good for the families. The Unified Command Structure was utilised mainly for that purpose. Gunning down of Ulfas,

their families and relatives earned prowess to them..The history of secret killings in the State was the outcome of this attitude.The output reported varies between 350 and 400 during the period under inquiry.However, the decision in this case has to be taken on the basis of its own evidence on record. The presence of hierarchy of a set of high police officers was not controverted. Cordoning off of the Usha Court by Sulfas brandishing their weapons remained unchallenged. The fact that the killings came hours thereafter is supplemented by the other pieces of evidence such as non-examination of the empty cartridges and ammunitions by forensic/ballistic experts, perfunctory nature of investigation, failure to arrive at any clue, non examination of any perpetrator or accomplice.hasty submission of Final Report (F.R). and non-payment of any compensation to the victim families corroborate the hypothesis All these factors put the State Police –SULFA nexus hypothesis beyond reasonable doubt..

On the basis of the above evidence and hypothesis, it is considered reasonable to limit the identification of the killers and their accomplices to the Usha Court Sulfas, on 7.3.99 namely, Shri J.K.Mahanta, Shri Bhaskar Sarma, Shri Dibakar Deka, and such other Sulfas as joined them in commission of the dasterdly killings, and the Guwahati (City) Police Administration within the jurisdictions of the Kshetri Police Station, who excited, helped.or facilitated the commission of the killings of Shri Kanta Ram Boro and Smti Sukuri Boro, and almost fatally injured Smti Rambha Boro,of the family members of ULFA Shri Nirmal Boro @ Tirtha Gogoi on 7;3;99 as found in evidence on record of the Kshetri P.S. Case No 45/99 .The Police hierarchy, up to the Home Minister would also be liable for the remote orchestration and by the principle of “respondeat superior”for the actions of the Police-Sulfa nexus.

It is recorded as fact that Sulfas Shri Bhaskar Sarma and Shri Dibakar Deka could not be heard, as their notices were not accepted, and then Commission’s hearing ended..

(C)Whether there was any conspiracy in targeting Shri Kantaram Boro, Smti Sukuri Boro and the motive behind such killing.

This term is replied in Parts 1.Conspiracy in targeting, and 2. Motive behind the killing.

1.Conspiracy in Targeting theVictim. Conspiracy.in the context of the instant inquiry, will mean criminal conspiracy which is defined in Section 126A of IPC as follows:.

“When two or more persons agree to do or cause to be done-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

“ A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the First Report and the same is referred to...The question whether there was any conspiracy or not in the killing of Sukuri Boro and Kantaram Boro has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that the family members of Nirmal Boro were requested by various Govt. agencies to persuade their younger brother shri, Nirmal Boro who has been an ULFA, and were forewarned by the army, the CRPF and police that if Nirmal Boro could not be persuaded, by them to join the peace talks and bring peace, the consequences would not be good for the family. The persons who participated in the act of actual killing on the fateful night, must have been the same or their agents and accomplices and as such, there could be no other answer than that there was criminal conspiracy in the killing of Smti Sukuri Boro and Shri Kanta Ram Boro.

There is evidence to show that the SULFAs of the Usha Court were enjoying protection from the police. This may have disabled the police from taking the right action against the Usha Court SULFAs in this case. Similar situation was found in case of Nalbari police sheltering SULFAs. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the learned Senior Government, Advocate and the parties. This means that the Usha Court SULFAs emerged as an Extra-constitutional authority. In case those SULFAs were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of Smti Sukuri Boro and Shei Kanta Ram Boro, there were 20 persons in the act of killing. But there was a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of killing show that there must also have been some authoritative institutional assurance of safety to the killers after the act was completed. Therefore, it is held that there was conspiracy of the worst kind, being among the protectors against the victims they were bound to protect under the law, in this case.

was completed. Therefore, it is held that there was conspiracy of the worst kind, being among the protectors against the victims they were bound to protect under the law, in this case..

II. Motive behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence to show that Sukuri Boro and Kantaram Boro, there could be no other reason for killing except for that his brother Shri Nirmal Boro was in the ULFA. This statement was not challenged in cross-examination. Therefore, there could be no doubt that forwarners having been a part of the conspiracy. The then Chief Minister published press appeals to the members of ULFA families to persuade their ULFA members to give up path of violence and surrender, the Army, the CRPF and the police accordingly advised the families, and also forewarned that consequences of failure to do so would not be good for the family and persuaded the members of Subarna's family in that line. The fact that there was a request made to the literary organizations and Sahitya Sabhas of the State to persuade the ULFAs to surrender is in the deposition of the then Chief Minister Mahanta. A course of conduct by different agencies towards similar persuatuin and the forewarning that in case of failure to effect surrender consequences would not be good for the family of Kanta Ram Boro, and thereafter finally culminating in his and his and his wife's killing support such a conclusion beyond reasonable doubt. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every citizen to freedom of thought and belief, freedom of association, the relatives need be pressurized to bring their wards back to peace talks, and why relatives who failed to do so should be mentally tortured and reign of terror let loose and when even then they failed, they should be secretly killed? The way in which, and with which Kanta Ram Boro and Sukuri Boro wre killed, and Smti Rambha Boro was injured leaves no doubt that the killers enjoyed complete immunity for their acts of killing, The way in which in this case, as in all other cases under enquiry, the investigations were made to fizzle out and the F.R. (Final Report was submitted shows that the police has been in collaboration with the killers. All these also prove that the entire scheme is being remote-orchestrated from the top of the department.. Those in helm of the Departments must be held accountable and need be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt. .

The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. The member of the ULFA family has been executed brutally, for no fault of his, and only for his belonging to the ULFA family of 0, that was, for a status offence without any sanction of law and in blatant violation of the victim's Legal, Constitutional and Human rights. Intention and motive are often used synonymously. The motive was the perpetuatgion of the AGP rule in the State of Assam killer has committed the killing, and without which he would not have done it.

(D) Pinpointing responsibility on persons involved directly or indirectly in the killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rarher thsn

on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The best evidence rule. "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that 'the best evidence must be given of which the nature of the case permits.' has often been regarded as expressing the greatest Roman Normalat fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, 'In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the corpus delicti may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court'.

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this group of seven cases is therefore is relevant and admissible,

Best on "The Principles of The Law of Evidence" (9th ed) in its Introduction (p.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7.2. "Judgment," "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the

faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of all the earlier cases are found in this case while answering its terms of reference so as to justify a finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs and their families and relatives, on their basis, namely :

1. That this killing involved an ULFA family, being that of the ULFA Chief Shri Arabinda

The following common characteristics of all the earlier cases are found in this case while answering its terms of reference so as to justify a finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs and their families and relatives, on their basis, namely :

1. That this killing involved an ULFA family, being that of ULFA Shri NNirmal Boro a
2. As in other cases, this killings of Shri Kanta Ram Boro and Sukuri Boro, were committed in the wee hours on 7.3.99 and the assailants escaped under darkness.
- 3..The assailants wore black dresses and covered their faces with black wrappers and gamochas to avoid being identified..
- 4.The weapons used in killing were firearms of prohibited bores being generally found in police-military situations
5. The firearms being of prohibited bores, forensic examination of the material exhibits was avoided.
6. The vehicles used were never seized or taken into custody..
7. There was police patrolling in the crime area during the killing hours..
8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an Extra-Constitutional authority and used as the executioners. the modus operandi being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send advance team to locate and survey the house, then to send armed and masked persons to shoot them dead or take them away and kill them secretly and throw the bodies somewhere,. In this case killing was in the wee hours of the morning..
9. There was general resentment and decry against the Unified Command Structure/ Chief Minister..

10. There was connivance of SULFA; and omission to examine or make any SULFA an accused, despite clues..
11. The investigation did not commensurate with the seriousness of the crime perpetrated..
12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
13. No condolence message was sent from the Govt. of Assam to the victim family.
14. No ex-gratia/compensatory payment was made by the then Govt. of Assam...
15. That in all the cases, including this case of Kanta Ram Boro and Sukuri Boro there is remote- orchestration from the Ministry, death penalty having been imposed on the victims for "status offences," of being members of ULFA or ULFA related families.
16. That from evidence of this case, as in all other cases, "remote orchestration" of "Ulfocide" is deducible. These common characteristics, along with evidence, prove, beyond reasonable doubt, remote orchestration of "Ulfocide" from "Home Ministry", through Police-SULFA nexus using some SULFAs as the striking arms or executioners.. This conclusion is based on the similarities of all the cases in almost all respects, which could not be so, unless there was remote orchestration from higher authorities. "To kill and get killed" applied to several SULFA leaders.

Questioned on the two cases, namely, that of killing of Dimba Rajkonwar and that of Dr. Dharanidhar Das and family, Shri G.M. Sroavastava said (A, 88) Normally police compares the cases on the basis of *modus operandii* and circumstances..

On the basis of the above evidence, it is considered reasonable to pinpoint the responsibility as the persons involved directly or indirectly in the killings, on the Usha Court Sulfas, namely, Shri J.K. Mahanta, Shri Bhaskar Sarma, Shri Dibakar Deka, and such other Sulfas as joined them in commission of the dastardly killings, and the concerned Guwahati (City) Police officers, who excited, helped or facilitated the commission of the killings of the family members of ULFA Shri Nirmal Boro @ Tirtha Gogoi on 7;3;99. The Police hierarchy, up to the Home Minister would also be responsible for the remote orchestration and by the principle of 'respondeat superior', for actions of the Police-Sulfa nexus.

This case deserves re—investigation on revival..

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY."

of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, ex hypothesi, there is no need of armed forces or other forces of the Union for the State. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. So also the National Games were held with great success. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed for restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

. The Army Districts. In para 15 we discussed the structure and functioning of the Unified Command Structure. In course of the Commission's hearing sessions in the Upper Assam district of Sibsagar it was learnt that the Upper Assam districts of Tinsukia, Dibrugarh, Dhemaji, North Lakhimpur and Sibsagar have been declared as Army districts and that, as a result, Army has been operating in those districts. In so far as the declaration is concerned, this Commission has nothing to do. As the Commission has to enquire into some criminal cases of some of those Upper Assam districts, the Commission has to see whether this declaration had any impact on those cases. The Commission proceeds on the basis that during the period from 1998 to 2001 also similar declaration could have been there in those districts, and the Unified Command Structure and the Armed Forces Special Powers Act were necessarily in operation in those districts. If that was so, what were the functions and powers of the Army thereunder would be relevant in the context of prevention of such killings. We have already discussed this, including the leading case, in para 15. The Armed Forces (Assam and Manipur) Special Powers Act, 1958 was amended by the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972; and it is now The Armed Forces in the State of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and

Mizoram Special Powers Act, and it is extended to all these North Eastern States. By section 4 of the Amendment Act 1972, section 3 of the principal Act stands substituted, namely,

"3. If in relation to any State or Union Territory to which this Act extends, the Government of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area."

The Armed Forces Special Powers Act does not enable the Armed forces to supplant or act as substitute for civil power after a declaration has been made under section 3 of the Act. The power conferred under Clause (a) of section 4 of the Act can be exercised only where any person is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or firearms; ammunitions or explosive substances. In other words, the said power is conditional upon the existence of a prohibitory order issued under a law, e.g. under the Cr.P.C. or the Arms Act, 1959. Such prohibitory orders can be issued only by the civil authorities of the State. In the absence of such a prohibitory order, the power conferred under clause (a) of section 4 cannot be exercised. Similarly, under section 5 of the Act, there is a requirement that any person who is arrested and taken into custody exercise of the power conferred by the clause (c) of section 4 of the Act shall be made over to the Officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

Maintenance of public order involves cognizance of offences, search, seizure and arrests followed by registration of reports of offences (F.I.R.s), investigation, prosecution, trial, and in the event of conviction execution of sentences. The power conferred under the Act only provide for cognition of offence, search, seizure and arrest and destruction of arms dumps and shelters and structures used in training camps or as hide-outs for armed gangs. The other functions have to be attended to by the criminal justice machinery. Thus, the functions in aid of civil power have been ruled by law and not by discretion. The deployment of the Armed forces of the Union in a State does not in any way deprive the people of the disturbed area of the State of their fundamental rights to life and liberty. Any violation of such rights under such provisions would not countenance violation of Constitutional and human rights of the people by the Forces deployed in aid of civil power, nor would it prevent fake encounters from being murders, or a crime from being a crime, punishable under the law.

Throughout evidence the official witnesses say that they kill the boys in self defence. The idea varies, and some seem to be of the view that Ulfas are to be shot at sight. Fake encounters are often reported in news papers. Almost always some obsolete weapons/ammunitions and/or some Ulfa related papers are put near the dead bodies obviously for post mortem justification of the killings. This will not stand on the way of the spade being called a spade...

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail* and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner..While no training course will be appropriate, considering their exalted position and prestige, periodical periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in

detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea..their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, but using their services as "guides, "spotters". trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the Insolvency principle is not applicable to criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the citizens was effected, and by those whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

(F) Any other matter related or relevant to the inquiry

Under this term the Commission would like to deal with the question of compensation, *ex gratia*, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the patriarch of the family, his wife and a bread earning son have been shot dead and Smti Rambja Boro was also gravely injured under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood

replenishment of the loss suffered by the survivors; The Commission, as submitted by the learned senior counsel for the Commission and the learned Govt. Advocate doth hereby order the State Government of Assam to pay a sum of Rs10.00.000 (Rupees ten lakh only), for the benefit of the family, in the name of Smti Rambha Boro, forthwith. More than seven years have elapsed, it brooks no further delay.



(28)

SHRI BIMALENDU BHAKAT KILLING CASE

Dudhnoi P.S, Case No 42'99

Date of Occurrence. 10.5.99

By this Commission's order dated 31.10.2006, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No.PLA 331/2005/1 dated 22.8.2995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry, with notice to the State Government.. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case.the following terms of reference, and any other related and relevant matters with recommendations, if any, namely:

- “(a) Circumstances , in each case, leading to the killing of its victim(s).
- (b) Identity of the killer(s) and accomplice(s), if any.
- (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
- (e)To make recommendations to prevent recurrence of such killing(s)
- (f) Any other matter related to or relevant to the purpose of this inquiry;”

(A) Circumstances leading to the kidnapping of Shri Bimalendu Bhakat.

On 10.5.99 a little after 7.30 P.M the Informant Shri Hemendra Nath Bhakat, lodged an FIR at the Dudhnoi P.S. to the effect that, the same evening, his younger brother Shri Bimalendu Bhakat was forcibly kidnapped by some miscreants, from his furniture shop, situated by the side of No.37 National Highway, opposite Dudhnoi High School. .It was stated that the colour of the Maruti van, in which his brother was kidnapped, was white, but its registration number was not known; and that there were two miscreants in it. Shri Hemendra Bhakat deposed that at about 7.30 P.M. his youngest brother Shri Atal Behari Bhakat came to him and reported about the kidnapping of their third brother and that the white Maruti van was without headlight,

and the employees of the furniture shop were not there having gone out for tea; and that an employee of a neighbouring furniture shop was nearby and that Bimalendu Bhakat resisted the kidnapping by holding fast to a post of the shop but was overpowered and dragged into the van which sped away towards Guwahati side.. Since then Bimalendu was never seen or heard of.

(B) The identity of the killers, and their accomplices, if any.

It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous.. We discussed the meaning of "secret". In para 7 of the Introductory Part 1. Identification of the killers has to proceed on the basis of investigation and evidence wherefrom, as submitted by Dr. Y.K. Phukan and Mr. P.K. Musahari, in this case, two shortcomings appear from records, namely, that only routine investigation were made; modern methods were not used; police dogs were not engaged to sniff out the culprits. Investigation was perfunctory, as important evidence was not taken promptly or not at all..

The killing of Shri Bimalendu Bhakat was secret not only as to the place of killing, but also as to the identity of the kidnappers/killers and their accomplices, if any..

Smti Ruma Brahma, wife of Bimalendu Bhakat, of Dudhnoi, Babupara, P.O. Dudhnoi, District Goalpara, stated, inter alia, that on 10.5.99 evening at about 7.30 P.M. some armed miscreants, coming in a white Maruti van forcibly took away her husband Shri Bimalendu Bhakat, from his furniture shop situated barely 150 feet from the Dudhnoi Police Station; that her brother-in-law Shri Hemendra Bhakat immediately after knowing about the kidnapping, informed the Dudhnoi P.S. which registered the Dudhnoi P.S. Case No. 42/99(G.R. Case No. 317/99), and there was no trace of her husband, and even if the miscreants had killed him, till then no dead body was recovered; that failing to find any clue, the police submitted (F.R.) Final Report of the case on 25.4.2002. According to Smti Brahma, Shri Rosevelt Rabha and Shri Jayanta Rabha @ Tepa, came out of the white Maruti van, and forcibly took her husband into the van. and Shri Rinku Choudhury, Sri Jagannath Sangma @ Chira, one Sangma of Dwaraka Gaon (Lakhipur Thana) and Lakshan Nath of of Baguan Gaon of Baguan Police station, were inside the white Maruti van. Her case was that all of them were Sulfas, and they took him away from his furniture shop, and that the two employees of the furniture shop and some public tried to chase the vehicle, but the O.C. of Dudhnoi P.S. Shri Himangsu Das dissuaded them saying that they might be shot at by the miscreants. The witness further stated that the van taking her husband proceeded ahead of the Dudhnoi P.S. by Damra Road by the side of which the the Dudhnoi SULFA camp was located; that the then S.P. Goalpara Shri Deepak Kumar was reported to, but nothing resulted; that for reason of security she did not mention the names of the kidnappers in the F.I.R.; that her husband was taken away suspecting him to be

connected with the ULFA; that at that time the then A.G.P. M.L.A. Shri Akan Rabha, the deputy Commissioner of Goalpara district Shri Khagendra Nath Burhagohain, the then S.P. Goalpara were connected with the aforesaid Sulfas; that the then D.I.G. Shri Dilip Bora used to come to Goalpara and he advised the Sulfas to listen to Rosevelt Rabha and Jagannath Sangma; and that the police record of the F.I.R. was annexed to the affidavit; As P.W. 1 Smti Ruma Brahma deposed that on the next date she went to the Dudhnoi P.S. and charged the then Second Officer Shri Krishna Kanta Sarma why they, while in checking, allowed the headlightless white Maruti van to cross without checking and allowing them to take her husband in it, and also charged him with that allegation, which he denied, and she wrote an application to the then S.P. Goalpara complaining about it, and the S.P. did not give proper attention, instead he observed that he was talking to the wife of an ULFA, and that must have been to facilitate the kidnapping. She said that from these facts she was compelled to believe that the Dudhnoi police was in nexus with the Sulfas and even the Government was in league with the kidnapping of her husband. She also said, that evening the Sulfas from the camp came and asked the furniture shops to pull down their shutters early, as they said, the situation would be very bad soon and that must have been to facilitate the kidnapping of her husband. Smt Brahma also said that Shri Lakhan Nath who was a Sulfa and stayed with Rosevelt Rabha in Bapujinagar camp told her brother that her husband having been a Boro, if they saw his dead body, they would have reacted, and, therefore, stones were tied to the dead body and it was thrown into the Krisnai River. She met Zahangir who was an employee of the neighbouring shop, who told her that at the time he was trying to light a petrolmax and the other employees were not there. He saw one Maruti van came and stopped near their shop and one man alighted from the vehicle, He was wrapping his body with a towel, perhaps to cover the arms underneath it. The shopkeeper asked him if he wanted anything, he said he wanted a man. Then that man came near her (Bimalendu's) shop and Bimalendu asked him if he came to place some orders. Replying, "I want you", caught hold of her husband and pulled him into the Maruti van and fled away. Zahangir neither knew the person nor saw the registration number of the vehicle. Zahangir told that he remembered to have seen that man in the SULFA camp of Rosevelt Rabha's house and people used to call him as "Saikia". The SULFA camp was in the house of Roosevelt Rabha. Ruma Brahma met him there and narrated what happened, and, assuring that she did not suspect him, asked him whether he could help find out her husband. Roosevelt rudely replied that he did not know anything about it. Witness also went to Rinku Choudhury's house. Two small boys told her that Rinku Choudhury entered the house a little while earlier, but his mother said he was not at home. When the witness narrated her husband's story, Rinku's mother said that whenever something happened somewhere, people wanted Rinku, and so she sent him to Guwahati and he lived there since. She wanted to meet Rinku Choudhury as she heard that he threw a dinner party at Dudhnoi I.B. that very night, as he was seen doing so on such occasions. There was no ransom demand from any quarter after the incident. Witness also met one Babul Roy, known to be a SULFA linkman who, that evening, asked the shopkeepers to shut down their shops early, but he said that he did not envisage anything of the kind. According to the witness the things at Dudhnoi came to such a pass that if a white Maruti van stopped near any one, people were scared and the A.G.P. Govt. must have been involved and that was why the secret killers were not

caught and even the officers could not detect them. She did not see the D.I.G. asking other Sulfas to listen to Roosvel Rabha and Jagannath Sangma, otherwise they would be in trouble, but that was the talk of the town. Her husband had a friend called Phephel @ Abhijit Kalita, but she did not know his particulars, except that he was abandoned by his father. According to her, the only reason for kidnapping of her husband was that he was the Secretary of the Furniture Dealers' Association and sided with the dealers which hindered collection of commissions from them and that enraged the Sulfas, there could be no other reason. A.G.P. M.L.A. Shri Akan Rabha visited her house, but no monetary help has come from Govt. despite her application and meeting D.C. There were lot of Sulfas at Dudhnoi SULFA camp in 1999. She has her only son aged 13. Her husband's elder brother Hemendra Bhakat was a teacher in Rongjuli Girls High School. There was no ULFA in her parental family or in her husband's family.. ..

Smti Ruma Brahma was cross-examined by the learned counsel for the noticee Sulfas under section 8B of the act, as permitted by the Commission under sec 8C. As he said that he did not receive copy of the FIR, he was furnished a copy of the FIR and was allowed to see the entire records of the case and he perused the same before cross-examination. During cross-examination she said that she was advised by Shri Siddhinath Patgiri, Advocate in the matter of her affidavit filed in this case. In her affidavit she mentioned 5 persons whom she knew. The FIR which mentioned 2 persons was not lodged by her, but by her husband's elder brother Shri Hemendra Bhakat, and she first learnt about the incident from the O.C. of Dudhnoi P.S. Shri Himangsu Das, at about 11 P.M, and not from Shri Hemendra Bhakat who lodged the FIR earlier. She signed her affidavit but did not write it herself. She was told about the Final Report submitted in the case as told by her husband's elder brother, but it being a "court matter" she did not know its meaning and implications. She admitted that in her deposition she said that she earlier did not disclose the names of the kidnappers for security reasons and that was within her mind and not that someone actually threatened her. She knew the named persons and those were not out of grudge, and not as suggested by Shri Siddhinath Patgiri. She denied the suggestion that she mentioned the names falsely or to feed fat the grudge against them, or those were imaginary and concocted. She replied to the suggestion that her husband was a Sulfas saying "I do not know"

N.W.1. Shri Himangsu Das, then O.C, Dudhnoi P.S. deposed that on 10.5.99 at about 9.10 P.M. Shri Hemendra Bhakat lodged the FIR to the effect that his younger brother Shri Bimalendu Bhakat was kidnapped at about 7.30 P.M., from near his furniture shop in a Maruti van and that there were two kidnappers in the vehicle., and on receipt of the FIR he made a G.D. entry and, registered case No, 42/99 and entrusted S.I. Shri K.K. Sarma to investigate the case, informed the S.P. and alerted all police stations and outposts of the State. Arriving at the Place of occurrence, he examined Zahangir Ali, employee of Bimalendu's shop, who told that at about 7 P.M. he with other employees went to take tea and on his return Shri Ghanashyam Nath reported to him that a little earlier two boys coming in a white Maruti van entered Bimalendu's shop and took him into the vehicle and sped away towards Goalpara and that he did not recognise the boys and did not see the vehicle registration number. Thereafter the O.C examined Zahangir, immediately informed the house of Bimalendu and came with Hemendra to the shop. Zahangir Ali told the O.C. and I.O. that Bimalendu Bhakat had some financial liability to the ULFA. Thereafter they examined Ghanashyam Nath,

Rambilash Sarma neighbouring shop keepers. Thereafter they proceeded to Salpara Reserve forest but found no trace of either the vehicle or the victim. In cross the O.C. said that he was O.C. there from the middle of 1998 to middle of March 2001. He was at the P.S. when the FIR was lodged., and not with the patrolling party. According to the O.C. traffic patrolling at the road crossing used to end and police patrolling used to begin at 7 P.M., but police patrolling was mobile and which way to go first was left to the party; and round about 7.30.P.M. there was no patrolling at the road crossing between Bimalendu's shop and the Police station. The patrolling was on National Highway Damara Road. This was discrepant with the coplaintants version.. Similar was the discrepancy in case of Zahabgir Ali.s version, complainant's version being that Zahangir was the lone employee at the Bimalendu's shop at that time and was trying to light a petromax when the assailants came, according to the police version he was out taking tea and on his return Ghanashyam Nath reported to him what happened in the mean time..The statements recorded u/s 161 cr.P.C. are unsigned by the maker and recorded by the inestigating officer.

P.W.2. Shri Hemendra Nath Bhakat deposed that on 10.5. 99 at about 7.30 P.M. his youngest brother Atal Behari Bhakat came to his rented house and narrated the story of kidnapping of their third brother Bimalendu Bhakat as deposed above. He immediately proceeded on his bycycle to Bimalendu's furniture shop, reached within 15 minutes, found it open, found none therea, no electric light, but met one Sashadhar Nath, an employee of a neighbouring shop with a candle light.. Sashadhar told him that only one armed man alighted and forcibly lifted away Bmalendu into the vehicle.and sped away by the Police station facing road.Then he came to the Dudhnoi P.S. where the 2nd Officer was there, as the O.C. was said to have been busy at the Dudhnoi crossing point a little away..On receipt of his FIR, the 2nd Officer and the O.C. who arrived by then,, told him that at the checking they did not find any white Maruti van without head light on. coming out of the P.S. Hemendra Bhakat tried to find out his brother. but found no trace of him. Whenever any dead body find was reported he used to hasten there, but did not find his brother's. Later he was called by Revenue Circle Officer- cum-Magistrate where he was asked to sign a statement which he did. Since then there has been bo information and Bimalendu Bhakat's wife has not been treated as widow. He wondered as to why his brother who was running a small furniture shop with low income, and he did not belong to any organisation, should have been so kidnapped and by whom.

The O.C. came to his house at about 10.30 P.M. and took his statement According to the witness Phephel was a friend of Bimalendu, and he was killed by secret killers, and the case of Bimalendu was of the same nature.and Sulfas were involved in both cases. He knew some Dudhnoi Sulfas, namely, Shri Roosvelt Rabha, Rinku Chaudhury and Shri Anil Saikia who had by then come to settle at Dudhnoi before the incident..The Sulfas used to reside in the house of their leader Roosvelt Rabha. and they moved about together.in different vehicles such as a white Ambassador that belonged to Rinku Choudhury and Maruti Gypsy that belonged to police, and Maruti van that belonged to the Sulfa camp. One employee of neighbouring Ramesh Jyoti Sarma's shop told the witness that at the time of being put into the Maruti van. Bimalendu was crying aloud. He did not receive any notice of Final Report in the case.. He did not talk with Rinku Choudhury as he exercised dadagiri beating and boxing people. He sometimes thought that his brother may have been mistaken as ULFA bcause he was friendly with Phephel...

As already stated. P.W.1. Smti Ruma Brahma in para 17 of her affidavit stated that at that time the D.I.G. Shri Dilip Bora now and then used to come to Goalpara, call the Sulfas and advised them to co-operate with Shri Rusevelt Rabha and Jagannath Sangma, otherwise they might be in danger.. In cross-examination (Q. 26) she said that she herself did not see it, but that was the talk of the people. In reply to Q.27 she replied that in fact there was a group of Sulfas under the leadership of Shri Rusevelt Rabha, and the people also said so. Appearing in response to a Notice under section 8B of the Act Shri Dilip Kumar Bora, then D.I.G. (C.W. Range) submitted a written statement where in Paras 7 and 8 it was said:

“(7) The allegation regarding involvement of the undersigned in the so called secret killings in the Goalpara district is unfounded. However, it is a fact that the undersigned met Rusevelt Rabha and other surrendered militants during his visits to the district in connection with their security

(8) It is not a fact that the undersigned threatened the former militants with dire consequences, if they do not co-operate with the police department in the activities of the police department.”

In cross-examination the D.I.G. said that the case was not brought to his notice as a special case by the S.P. and not discussed during his visit to the district; and that it was a fact that he met Shri Rusevelt Rabha and other Sulfas both at Goalpara and Guwahati City in connection with their security, but no security details are stated. The S.P. has the responsibility about security of the Sulfas. The D.I.G. himself did not visit the Sulfa camp at Goalpara, but called the Sulfas to the Circuit House. By Sulfa camp at Goalpara he meant the camp on the Damara road of Dudhnoi, not far from the Dudhnoi Police station. Shri Rusevelt Rabha was, according to him, leader of the Sulfas. By leader he meant the person through whom police tried to maintain discipline of the camp and also to execute rehabilitation programme of the Sulfas and for these purposes they got it done through the leader. For example, when they moved out they had to obtain the permission of the leader, and if for some reason they had to go out, they also had to obtain his permission. However, the D.I.G. could not say where Shri Rusevelt Rabha was on 10.5.99, and also whether the Dudhnoi Sulfas used to collect commissions on sale proceeds from the Dudhnoi furniture shops, as the case was not brought to his notice. Replying to the question whether there was any SULFA camp at Dudhnoi, the D.I.G. said: “Yes, there was a SULFA Camp, the actual Camp I have not seen but it was somewhere by the side of the Damra road which. I was told, was not far from the Dudhnoi P.S.” The leader and other Sulphas were provided with P.S.O.s according to threat perception based needs.. He was not aware of the Bapujinagar Sulfa camp at Goalpara then...

Shri Anil Saikia, appearing in response to Notice u/s. 8B said that he did not remember where he was on 10.5.99. He had been with his father before they came to stay at Dudhnoi Thekachuk at Damra road where Rusevelt Rabha had his house. This was corroborated. As regards his alleged association with the ULFA Shri Saikia corroborated that he was in the ULFA and, inter alia, he used to impart training in Martial Art to others and also deliver letters demanding money for ULFA. After his surrender, he continued to be associated with the Sulfas of Dudhnoi and used to deliver letters demanding money from different persons. He knew Zahangir who was an

employee of Bimalendu Bhakat in his furniture shop. He also knew Shri Hemendra Bhakat who told his name as a suspect in kidnapping of Bimalendu Bhakat. He was also acquainted with the other Dudhnoi Sulfas who were alleged to have been involved in the kidnapping before the Commission. He also was acquainted with the Dudhnoi Sulfa camp on the upstairs of the Narayan Hotel at Damra Road. Shri Rinku Choudhury was his class friend in Dudhnoi Coollege Higher Secondary Class. The furniture shop was only a mile from his Cycle repairing shop, and Bimalendu used to come to his shop for lighting a petromax. He joined the ULFA in 1989 and surrendered in 1992 along with Rusevelt Rabha, Rinku Choudhury, Bimal Rabha and Harekrishna Kalita, who also used to come to his cycle repairing shop about a km away from that of Bimalendu Bhakat. Attention of Shri Anil Saikia was drawn to the following "In the reference of Q. No. 27 of P.W. 2 Shri Hemendra Nath Bhakat who replied that there were some Sulfas at Dudhnoi of which he knew Shri Rusevelt Rabha, Rinku Choudhury, Shri Anil Saikia, Shri Jayanta Rabha @ Tapa and Shri Jagannath Changma @ Tapa who earlier resided outside Dudhnoi but came to settled there even before that incident.

Q. What do you have to say about it ? .

A. Shri Hemen Bhakat knows me and I call him as maternal uncle and he calls me nephew..

Q.. I put it to you that the person described as Saikia by Zahangir, an employee of Bimalendu Bhakat's shop at the relevant time was none but you.

A.. It is false. I was not that Saikia'.

But he says that he did not know any other Saikia of that description.

Shri Jyanta Deka, Advocate, the learned counsel for the noticee Sulfas Shri Rusevelt Rabha and Shri Rinku Choudhury, was allowed to cross-examine Smti Ruma Brahma. Earlier, the copy of the annexure to her affidavit, namely, copy of the FIR, was supplied to the learned counsel who was also allowed to see the entire case diary and other records of the case. There was, therefore, full compliance with the principles of natural justice. Indeed in the Section 8B notice itself the rights of the noticee were mentioned from section 8C. In the cross examination no established facts could be demolished. The learned counsel laboriously argued the case, and thereafter submitted written arguments, mainly on violation of the principles of natural justice, though there was no violation on that count at all.. Smti Ruma Brahma's evidence is being considered according to law. She did not claim to have herself seen the kidnapping. Her evidence has been, in some respects, amply corroborated by other witnesses.

From the above evidence three hypotheses seem to emerge, namely, it could be caused, by some other ULFA group than that of Bimalendu Bhakat who, as the S.P. Shri. Deepak Kumar said to Smti Uma Brahma, that he was speaking to the wife of an ULFA.; It could be by the Sulfas of Dudhnoi SULFA camp the existence whereof was stated by the D.I.G. Shri Dilip Bora, or it could have been caused by the State Government in the Home Ministry through the instrumentality of the District Police administration through the instrumentality of the trusted Sulfas of dudhnoi and Goalpara. The first does not stand scrutiny inasmuch as it was not established that Shri Fefel who was similarly killed was an ULFA. Smti Ruma Brahma categorically said

that neither from her paternal family, nor any one from her husband's family was in the ULFA. The observation of the S.P., namely that he was talking to the wife of an ULFA did not amount to proving that Bimalendu Bhalat was an ULFA. That being the position, there could be no possibility of some other ULFA group being interested in kidnapping/killing if Bimalendu.

The second hypothesis has amply been supported by evidence. The nature and activities of the Sulfas of Dudhnoi/Goalpara under the leadership of Shri Rusevelt Rabha, and his followers, including Shri Anil Saikia, have been brought in evidence. The white Maruti van of the Dudhnou Sulfa camp, the playing of cards by Rusevelt Rabha and his colleagues at the backside lawn of Bimalendu Bhakat's furniture shop have made the hypothesis reasonable. However all those together may not be enough to explain the kidnapping/killing. The execution of the kidnapping plan without being detected or intercepted by police, makes the third hypothesis plausible.

The third hypothesis, in essence, is that of Police-Sulfa nexus. It has been in evidence that from the second half of 1999 there had been a coercive fund collection drive by the State through its instrumentality of police- Sulfa nexus, i.e. of the police and the trusted Sulfas. In the instant case the demanded shares in the sale proceeds of the Dudhnoi furniture dealers was such a collection, and by the same theory both the police and the Sulfas were to execute the same. Had it not been so, it would not have been possible that evening to kidnap Shri Bimalendu Bhakat from his shop of Dudhnoi, just few steps away from the Dudhnoi Police Station, that too when the checking was going on at the nearest crossing of the police Station at about 7.30. P.M. The police inaction commensurated with the perfunctory nature of the investigation of the case and the premature submission of the F.R. (Final Report) in the case, The leadership of the Sulfas in Shri Rusevelt Rabha and the association of the other Sulfas of Dudhnoi was corroborated by no less a person than a DIG, of course, in the context of their security. But the same could as well be in this field. The evidence as to involvement of the Sulfas named in evidence could not be challenged in cross-examination. Even throwing of a dinner on that occasion was deposed to. The Sulfas named were examined and cross-examined and their evidence considered.

On the basis of the above evidence, and hypothesis, the identity of the killers and their accomplices, if any, may reasonably be confined to Sulfas Shri Rusevelt Rabha, Shri Jayanta Rabha @ Tepa, Shri Jagannath Changma @ Chira, Shri Anil Saikia, and the other Sulfas of Dudhnoi Sulfa Camp as may have been associated with the incident. The then Police administration of Dudhnoi Police Station, mentioned by Smti Ruma Brahma, whose cases could not be demolished in her cross-examination, and who excited, helped or facilitated the kidnapping/Killing would also be liable under the law for their course of action in connection with the incident. The meticulous planning of the kidnapping, the order to the furniture shops to pull down their shutters early, the light being off, the white Maruti van giving the slip to the patrolling party including the O.C. at the crossing in front of the Dudhnoi Police Station, are sufficient to establish the State plan being executed by the Dudhnoi police using the Sulfas as the striking arm. That night without being detected, the *modus operandi* suggest it to have been part of the State plan of fund collection, that is, the deliberate killing of the rising successful businessmen who fail or refuse to satisfy the demand. An element of clandestine

supply of smuggled timbers, in violation of the Supreme Court's order in Godavarman's case also could not be ruled out altogether..in this case..

The Commission is informed that Shri Rinku Choudhury, against whom there was some allegation in this case, is no more. *Actio personalis moritur cum persona*. Personal actions die with the person. His heirs and successors will, therefore, in no way be affected by the allegations made against him in this case.

This case deserves to be revived ad re-investigated.

(C)Whether there was any conspiracy in targeting Bimalendu Bhakat and motive behind such kidnapping/killing.

This term is replied in Parts 1..Conspiracy in targeting, 2. Motive behind the kidnapping/killing ..

I..Conspiracy in Targeting the Victim. Conspiracy.in the context of the instant inquiry,will mean criminal conspiracy which is defined in Section126A ofIPC thus: .

“When two or more persons agree to do or cause to be done-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof..

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code.

A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing.if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explantation.-1.A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures,or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing;

Explantation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the First report and the same is referred to...The question whether there was any conspiracy or not in the kidnapping/killing of Bimalendu Bhakat has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that the family members of Bimalendu Bhakat knew that the Sulfas of Dudhnoi Town demanded commissions on his sale proceeds, and they resented his being Secretary of the local Furniture dealers Association created some

disharmony which culminated in the taking him away. The persons who participated in the act of actual kidnapping on the fateful evening, must have been the same or their agents and accomplices and as such, there could be no other answer than that there was criminal conspiracy in the kidnapping/ killing of Bimalendu Bhakat..

There is evidence to show that the SULFAs were enjoying protection from the police. This may have disabled the police from taking the right action against the SULFA involved in this case. Similar situation was found in case of Nalbari police sheltering SULFAs. Indeed the police-SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an extra-constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the kidnapping/killing of Bimalendu Bhakat, there were 5/6 persons in the act of killing. But there was a course of conduct involving the deciders of the course of action culminating in the kidnapping/killing. Considering the facts of this case in light of the definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to criminal conspiracy, when executed. The manner of planning and execution of the act of kidnapping/killing show that there must also have been some authoritative institutional assurance of safety to the killers after the act was completed. Therefore, it is held that there was conspiracy of the worst kind, being among the protectors against the victims they were bound to protect under the law, in this case.. The killing is evident from the statement that Bimalendu having been a Boro, there could be reaction if his seae body was seen by them, and so the body was liaded with stones and thrown into the Krishnai river. As more than seven years have elapsed and had he been alive, he would naturally been heard of by his wife and relatives. However, as there could be questions of inheritance and succession, and this Commission is not a Civil Court, it refrains from saying that Bimalendu Bhakat is no more, though it is proceeding more or less on that basis..

II. Motive behind the kidnapping/ killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of P.W 1 that there could not be any other reason for kidnapping Shri Bimalendu Bhakat except that he was the Secretary of the Dudhnoi Furniture Shop Owners Association.. This statement was not challenged in cross-examination. Therefore, there could be no doubt that the kidnappers having been a part of the conspiracy. Bimalendu's association with Phephel was suggested by some to have been the cause of his kidnapping. However, there was no evidence of army or police having come to their house in search of Bimalendu. That suspicion is without sufficient basis. On the other hand, there is evidence that since the Furniture shops Association was formed, collection of money from the shops became difficult and resisted. This was, therefore, the reason for the kidnapping. There have been other cases where such demands from successful business men having been kidnapped for failure to satisfy such demands. It is accordingly reasonable to hold that the reason was monetary rather than being friendly to UL Phephel. In any case there must have been a demand and someone were to collect the funds from some high authority. That was the real conspiracy as appearing from facts. So it is held that there was conspiracy to collect the clandestine unlawful demand.. The way in which the

kidnapping was done, leaves no doubt that the kidnappers/killers enjoyed complete immunity for their acts of kidnapping/killing. The way in which in this case, as in all other cases under inquiry, the investigations were made to fizzle out and the F.R. (Final Report) was submitted shows that the police had been in collaboration with the kidnappers/killers. All these also prove that the entire scheme was being remote-orchestrated from the top of the Department. Those in helm of the Departments may be held accountable and need be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt. .

The immediate motive of the kidnappers/killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the kidnappers/killers. The desire of a consequence is the motive for an action. Bimalendu Bhakat has been executed brutally, for no fault of his, and only for his being the Secretary of the Furniture Shop Owners Association to resist illegal collections, without any sanction of law and in blatant violation of the victim's Legal, Constitutional and Human rights. Intention and motive are often used synonymously. The motive was the perpetuation of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty and dangerous propensity. In Criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the kidnapping/killing will mean that for which the kidnapper/killer has committed the kidnapping/killing, and without which he would not have done it.

(D) Pinpointing responsibility on persons involved directly or indirectly in the kidnapping/killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The Best Evidence rule. "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that "the best evidence must be given of which the nature of the case permits." has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things

today the emphasis has somewhat changed. (P. 53) According to Phipson, "In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court".

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases under inquiry is, therefore, relevant and admissible,

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction (pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated (in another case) about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of all the earlier cases are found in this case, while answering its terms of reference, so as to justify a finding of a general plan

for coercive clection of funds from successful businessmen failing which ,deliberate killing of those who fail to satisfy the demand, namely :

1. That this killing involved a Secretary of the Dudhnoi Furniture Shop OwnersAssociation the members refusing to satisfy coercive monetary demands from high authorities... .

2. Unlike in other cases, this Kidnapping/killing, of Bimalendu Bhakat , was committed in the evening 7.30 P.M. when light was off immediately, to allow the assailants to escape under darkness..

3.. The assailants came in a white Maruti van, without head lights on and forcibly kidnapped Bimalendu Bhakat.

4. The weapon carried by the mainassaulants was covered and concealed under a shaw/

5. The firearms being not used, question of foensic examination did not arise...

6. The vehicle used was reportedly a white coloured Maruti van without number plate which was never seized or taken into custody..

7. There were police patrolling in the crime areas prior and posterior to, but not during the kidnapping as said by police.

8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the kidnapping/killing, some of the latter being constituted into an Extra-constitutional authority and used as the executioners.the modus operandii being to visit the family, to send advance team to locate and survey the house, then to send armed and masked persons to take them away and kill them secretly and throw the bodies somewhere,. In this case kidnapping/killing was in the evening.

9. There was general resentment and decry against the Unified Command Structure/ Chief Minister.. and the Police-Sulfa nexus.

10. There was ..connivance of Sulfas and failure to accuse any Sulfa despite clues.

11. The investigation did not commensurate with the seriousness of the crime perpetrated..

12.The modern scientific methods of investigation,finger/foot prints werenot used

13.No condolence message was sent from the Govt. of Assam to the victim family.

14.No ex-gratia/compensatory payment was made by the Govt. of Assam..

15Thatinthiscase.also remote orchestraton is deducible

16. From evidence of this case, as in all other cases, "remote orchestration" of kidnapping is deducible These common characteristics, along with evidence, prove.

beyond reasonable doubt, remote orchestration from "Home Ministry", through Police-SULFA nexus using some SULFAs as the striking arms or executioners.

This conclusion is based on the similarities of all the cases in almost all repects, which could not be so, unless there was remote orchestration from higher authorities.. . The kill and get killed idea applied to a SULFA leader..

On the basis of the abive evidence, and hypothesis, the responsibility for the kidnapping/killing may reasonably be pinpointed on Sulfas Shri Rusevelt Rabha, Shri Jayanta Rabha @ Tepa, Shri Jagannath Changma @ Chira, Shri Anil Saikia, and,

the then Police officers of Dudhnoi Police Station, and the authority that remote-orchestrated the incident, as involved directly or indirectly in the kidnapping/ killing of Shri Bimalendu Bhakat....

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed for restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy.. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

. The Army Districts. In para 15 we discussed the structure and functioning of the Unified Command Structure. In course of the Commission's hearing sessions in the Upper Assam district of Sibsagar it was learnt that the Upper Assam districts of Tinsukia, Dibrugarh, Dhemaji, North Lakhimpur and Sibsagar have been declared as Army districts and that, as a result, Army has been operating in those districts. In so far as the declaration is concerned, this Commission has nothing to do. As the Commission has to enquire into some criminal cases of some of those Upper Assam districts, the Commission has to see whether this declaration had any impact on those cases. The Commission proceeds on the basis that during the period from 1998 to 2001 also similar declaration could have been there in those districts, and the Unified Command Structure and the Armed Forces Special Powers Act were necessarily in operation in those districts. If that was so, what were the functions and powers of the Army thereunder would be relevant in the context of prevention of such killings. We have already discussed this, including the leading case, in para 15. The Armed Forces (Assam and Manipur) Special Powers Act, 1958 was amended by the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972; and it is now The Armed Forces in the State of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram Special Powers Act, and it is extended to all these North Eastern States. By section 4 of the Amendment Act 1972, section 3 of the principal Act stands substituted namely,

"3. If in relation to any State or Union Territory to which this Act extends, the Government of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area." The Armed Forces Special Powers Act does not enable the Armed forces to supplant or act as substitute for civil power after a declaration has been made under section 3 of the Act. The power conferred under Clause (a) of section 4 of the Act can be exercised only where any person is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or firearms; ammunitions or explosive substances. In other words, the said power is conditional upon the existence of a prohibitory order issued under a law, e.g. under the Cr.P.C. or the Arms Act, 1959. Such prohibitory orders can be issued only by the civil authorities of the State. In the absence of such a prohibitory order, the power conferred under clause (a) of section 4 cannot be exercised. Similarly, under section 5 of the Act, there is a requirement that any person who is arrested and taken into custody exercise of the power conferred by the clause (c) of section 4 of the Act shall be made over to the Officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

Maintenance of public order involves cognizance of offences, search, seizure and arrests followed by registration of reports of offences (F.I.R.s), investigation, prosecution, trial, and in the event of conviction execution of sentences. The power conferred under the Act only provide for cognition of offence, search, seizure and arrest and destruction of arms dumps and shelters and structures used in training camps or as hide-outs for armed gangs. The other functions have to be attended to by the criminal justice machinery. Thus, the functions

in aid of civil power have been ruled by law and not by discretion. The deployment of the Armed forces of the Union in a State does not in any way deprive the people of the disturbed area of the State of their fundamental rights to life and liberty. Any violation of such rights under such provisions would not countenance violation of Constitutional and human rights of the people by the Forces deployed in aid of civil power, nor would it prevent fake encounters from being murders, or a crime from being a crime, punishable under the law.

Throughout evidence the official witnesses say that they kill the boys in self defence. The idea varies, and some seem to be of the view that Ulfas are to be shot at sight. Fake encounters are often reported in news papers. Almost always some obsolete weapons/ammunitions and/or some Ulfa related papers are put near the dead bodies, obviously for post mortem justification of the killings. This will not stand on the way of the spade being called a spade...

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious,

communal, racial, ethnic, social, historical. or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner..While no training course will be appropriate, considering their exalted position and prestige, periodical periodical seminars and discussions at government levels may refresh their knowledge.and experience.

The Police department is the first resort of the people for protection of their life,liberty, property etc.Spredding disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society, to the extent he is capable of.. There is no doubt that our Police Force is one of the best in the country.To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea..their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate peotection, but using their services as "guides, "spotters". trouble-shooters and cclaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the Insolvency principle is not applicable to criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respomdeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective resplonsibility may apply to all those who were forming Govtrnment in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the citizens was effected, and by those whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favoue in the ensuing political process of the State. Let there be no witch hunting of any sort. How the affected people will accept or reject them will, of course, be an entirely different matter.

(F)Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex-gracia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such

reliefs and rehabilitation package, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning patriarch of the family has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the widow of the victim Smti Ruma Brahma, for the benefit of the family, a sum of Rs.5,00,000 (Rupees five lakh only), forthwith. More than seven years have already elapsed, and it brooks no further delay.

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(29)

SHRI KHAGEN DAS KIDNAPPING CASE

Nalbari P.S. case No. 175/99

Date of occurrence . 18.6.99

By this Commission's order dated 14.11.2006, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No.PLA 331/2005/1 dated 22.8.2995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference, and any other related and relevant matters with recommendations, if any, namely:

- “(a) Circumstances , in each case, leading to the killing of its victim(s).
- (b) Identity of the killer(s) and accomplice(s), if any.
- (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
- (e)To make recommendations to prevent recurrence of such killing(s)
- (f) Any other matter related to or relevant to the purpose of this inquiry;”

(A) Circumstances leading to the kidnapping of Shri Khagen Das.

On 18.6.99 Shri Kanak Das, lodged an F.I.R. at the Nalbari P.S. to the effect that in the afternoon at 4.20 P.M. Shri Khagen Das, son of Late Upen Das, was kidnapped from near the

Sandha Post office Chowk, while he was going there to telephone to enquire when his sister and brother would be returning from Patna completing treatment there. The kidnappers came in a Maruti Gypsy. On the way back they also reportedly picked up Shri Ajoy Kalita (Later learnt that his surname was Talukdar), who was later released..Shri Khagen Das has not been seen or heard of since then.

(B) The identity of the killers, and their accomplices, if any

It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea or negligence*. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous.

We discussed the meaning of "secret". In para 7 of the Introductory Part 1. Identification of the killers has to proceed on the basis of investigation and evidence. wherefrom, in this case, two shortcomings appear from records, namely, that only routine investigation proceeded; modern methods were not used; police dogs were not engaged. to sniff out the culprits; foot or finger prints were not taken. Investigation was perfunctory, as important evidence were not taken promptly or not at all

P.W. 1 Smti Reba Das, mother of Shri Khagen Das, went to Shri Ajoy Talukdar to know what happened, but he only kept on crying without disclosing anything to her. She then went to the Nalbari P.S and enquired about Khagen Das, but police told her that at that age she should not take that much pain, and that they would find out and restore him. She then went to Shri Ranjan Bhuyan, D.S.P.(HQ) Nalbari, who told her that they had already sent Police to Belsor to fetch him. Few days thereafter she met the then S.P. Nalbari who told her that Shri Nagen Sarma, then a Minister, already telephoned him saying that Shri Khagen Das was a good boy and should not be killed. Thereafter she again went to Shri Ajay Talukdar, who this time, told her that Shri Khagen Das and himself were taken to the Usha Court apartments at R.G. Barooah Road, and were kept tied in two different rooms, with their eyes tied with black cloths and that somehow he found himself out of the room and taken out of captivity. About ten days thereafter she went to Shri Nagen Sarma, Hon'ble Minister at Dispur, who told her that her son was at Sivasagar and she should not be worried about him. She expressed that she believed that shri Dibakar Deka of Kendukuchi was involved in the matter of kidnapping her son. The witness produced the photo copy of an order supposed to have been passed by Shri Nagen Sarma, the then Hon'ble Minister of Forests, dated 30.4.99 directing his subordinate to appoint Shri Khagen Das.. The witness lastly said that her third son Shri Nayan Das @ Naba Das had been in the ULFA since June 1998..

P. W. 2. Shri Kanak Ch Das, the informant, deposed that Shri Khagen Das was his nephew and he corroborated the story of kidnapping of Shri Khagen Das. On 18.6.99 when he and Smti Reba Das. mother of Khagen Das, were returning from a *Nam Prasang in Bora Jara* village on way to Khudra *Chenikuchi* village, they were informed by two of his nephews that his nephew (elder brother's son) was kidnapped.. Consulting with the other nephews, he lodged an FIR at the Nalbari P.S. at about 6.00-7.00 P.M..to the effect that Shri Khagen Das was kidnapped .He then went to their original village Khudra Chenikuchi and

consoled Smti Reba Das who was told by police not to worry as her son would be found out and restored to her. Police did not record any statement from him before he returned to his Majdia house. Later, he learnt that Ajay Talukdar was left near a road and had returned home..

P.W. 3 Shri Ajay Talukdar on 18.6.99 at about 4.30 P.M. was getting ready wearing a half pant and a ganjee to go to play a football match when the vehicles that were kidnapping Shri Khagen Das stopped in front of his house and some armed men gheraoed his house, and some of them asked his name and the moment he told his name, they told him to pull out his ganjee, and with his ganjee they tied his eyes, and as he felt, dragged to the vehicles, and drove away..

N.W.1 Shri Ranjan Bhuyan, then D.S.P.(HQ), Nalbari district from 1998 to December 2002, was aware of the facts of the case including the kidnapping of Shri Ajay Talukdar and rightly pointed out that Ajay Kalita's case was nowhere mentioned in the case diary of Khagen Das kidnapping case. It is correct that the Ajay Talukdar kidnapping was mentioned by Smti Reba Das, mother of Shri Khagen Das in her deposition. But what Shri Ajay Talukdar said to Smti Reba Das has special importance because of his statement that both he and Khagen Das were taken to the Usha Court at Radha Gobinda Barua Road, Guwahati and both were confined to two different rooms and Ajay Talukdar was later released at a roadside. This probalised the statement of Smti Reba Das suspecting that her son was kidnapped by Sulfa Shri Dibakar Deka, subsequently stated to have been staying at Guwahati. Shri Bhuyan did not remember whether Smti Reba Das met him as deposed by her, but said that as he was in charge of law and order at that time, she might have met him. Regarding the statement that he was even on that date sending someone to Belsor to fetch Shri Khagen Das, he did not remember to have said so, and that even if he said so, it was because searches to find out Shri Khagen Das was conducted in different places, might be Belsor was one of them, but it by no means meant that he knew that Khagen Das was kept at Belsor or at any other place. It was only in course of efforts to find the boy out. He had no information that Khagen Das was an ULFA. Only later he came to know that his brother Shri Nayan Das @ Naba Das was in the ULFA since 1998. He knew the family of Khagen Das, because one of his cousin sisters was married to one of his (Shri Bhuyan's) class friend, and he knew that the economic condition of the family was not comfortable, but did not visit that family even after the incident. Shri Bhuyan stated that kidnappings in Nalbari district might not be for extortion, but on suspicion that one was army or police informer.. He did not agree with the supervisory note given by the O.C. that the I.O. did not take any pain in investigating the case, because they had to take into consideration the atmosphere at the time of the incident in which the people were reluctant to speak about the ULFA, and that in the year 2003 that atmosphere was a little relaxed and people were free to speak about ULFA. He did not issue any supervisory note, may be, because he was discussing the case with I.O so frequently that a written note was not thought of. No Sulfaman was examined in this case; and a note dated 31.5.04 said that Khagen Das was an ULFA linkman, and some other extremist organisation may have kidnapped and killed him for that reason, might be by any secret killers. Asked whether, after it was known that Naba Das was in the ULFA, this case was treated as an ULFA category case, Shri Bhuyan said that from the case diary it did not appear to have been so treated.

N.W. 4, Shri Bhuvan Gohain, as stated in his affidavit and deposition, was an attached S.I. of Nalbari P.S on the date of occurrence, i.e., 18.6.99, but then he was undergoing treatment at the G.M.C.H. Guwahati, and so not present at the P.S. that day. After about three

N.W. 4, Shri Bhuban Gohain, as stated in his affidavit and deposition, was an attached S.I. of Nalbari P.S on the date of occurrence, i.e., 18.6.99, but then he was undergoing treatment at the G.M.C.H. Guwahati, and so not present at the P.S. that day. After about three months of treatment he returned to P.S. and meanwhile investigation of the case was already entrusted to S.I. Shri Dhaniram Sonowal, and he was not required to do it before 6.8.03 when it was entrusted to him. Immediately taking over, he perused the supervisory note issued by O.C. Shri B.K. Hazarika and visited the houses of the complainant and of Smti Reba Das and recorded statements including that of Shri Rana Das, but inadvertently written as "Naba Das", but could not find any lead or clue; and he submitted a report suggesting that the case be returned in F.R. and the same to the then Inspector O.C. who suggested him to submit a report, which having been done by him on 31.5.04 the same was ultimately accepted by the C.J.M., Nalbari on 2.9.06 whereafter he was transferred out of Nalbari P.S. In cross-examination he said that he followed up the note of the O.C. and examining the witnesses he found that Shri Khagen Das was an ULFA linkman; and that he did not examine any SULFA in the case not because there was any instruction from above not to do so, but because there was neither any suggestion or allegation made against any SULFA till then. Having investigated the case, his impression was that of the ULFA, the BLT and the MULTA which could be involved was not sure, though he thought that one of those could be involved.

N.W. Shri Apurba Jiban Barua had been the S.P. of Nalbari District, Nalbari, from 18.6.97 to 2.3.2000. On receipt of the FIR lodged by Shri Kanak Ch Das at the Nalbari P.S. regarding kidnapping of his nephew on 18.6.99, the Nalbari P.S. case No. 175 /99 was registered and entrusted to the I.O. for investigation and the police machinery was geared up to trace out the missing person and the culprits, and different places were searched and people interrogated. According to their information, it is said, Shri Khagen Das himself was an ULFA linkman and his brother Shri Naba Das was in ULFA. Shri Barua admitted that the then Forest Minister, Assam, Shri Nagen Sarma telephoned him to locate the missing person Shri Khagen Das as he was a very good boy, and that he (Shri Barua) assured that the police would try their level best to find him out, but he denied the deposition of Smti Reba Das that the Minister had asked him not to kill her son Shri Khagen Das, and he denied that statement. What he was said was to locate and retrieve the person which he was doing in sincere performance of his duty. Though the information was there, Shri Khagen Das was not arrested because there was no evidence of his working as ULFA linkman. The S.P. Shri Apurba Jiban Barua said that involvement of SULFA was suspected in the case, and that the Sulfas of the Nalbari Reserve SULFA camp were not found to have been involved, and the outside Sulfas were being examined. The S.P. Shri Barua was aware of the background and notorious character of Shri Dibakar Deka as he apprehended him while at Tezpur and also did not allow him free entrance to Nalbari and tried to keep him at bay, but could not monitor his movements while Dibakar Deka stayed at Guwahati. Police, he said, would not rule out the possibility of involvement of Dibakar Deka since no culprit had been detected in the case. Police suspected the other extremist groups like the BLT, the BTF, but till his departure from Nalbari on 2.3.2000 even the motive could not be ascertained, far less finding out the culprits. During his stay, he frequently discussed the case with his subordinates and therefore no supervisory notes in writing was there. He reiterated that the then Forest Minister did not tell him that Khagen Das should not be killed, as deposed by Smti Reba Das. About the O.C.'s note that the I.O. did not take proper investigative steps, Shri Barua said, that such a note was to have been placed before the S.P. for action, but as he was transferred earlier, he could not

say anything on it. Regarding this case being S.R. or not, the S.P said that all kidnapping cases are generally treated as S.R., but the records did not reveal it to have been so treated., so also regarding progress report..

N.W. 3 Shri Dibakar.Deka both in his affidavit and in deposition said that the allegations said to have been made against him by different witnesses were made on suspicion and so denied by him. He also denied the statements made by Shri Apurba Jiban Barua about him, except that he was arrested at Tezpur by Shri Apurba Jiban Barua, then D.S.P.,Tezpur and detained for a day and released when nothing was found with him.He also did not know on what basis Shri Barua said that he could not rule out the possibility of his(Dibaaaakar's) involvement in the case; and said that he was not in the ULFA but because some of his relatives were in the ULFA, the police-military frequently troubled him and to get rid of these he surrendered as ULFA and became a SULFA and with the financial assistance of Rs. 1.6 lakhs he started his bysiness which has now flourished and he could repay the amount to Bank. He did not know the incident of kidnapping of Khagen Das as he has been staying at Guwahati since 1994 and busy in his own affairs. Though he was not an ULFA yet as advised by Shri Upen Deka, Assistant General Secretary of AASU he surrendered and obtained a certificate and financial assistance.His nephew was Shri Aswini Deka @ Bipul Mahanta operating in Dhubri, but has since been killed. He did not know any SULFA s of Nalbari and had no contact with them. He hasd no personal knowledge of the Nalbari Reserve SULFA camp, but read about it in papers. Till he surrendered in 1994 there were no ULFAs in his locality, but he did not know the position thereafter. He read in newspapers that the Mithinga Doimary's family was killed by the army, police and the SULFA.He came to know of the killing of Shri Khagen Das only from the notice sent to him by this Commission.The Khudra Chenikuchi village of Shri Khagen Das would be about 3/4 kms from his own village of Khudkuchi.He did not know any member of Khagen Das' family.nor anyone from that village, nor that one brother of Khagn was in the ULFA, He surrendered only with the hope of getting financial assistance.He came accross a news iten in Assamese daily "Aji" of 12.9.2005 that both Khagen Das and Ajay Kalita(Talukdar) were kidnapped together by him, as he was told by Shri Ajay Kalita(Talukdar) himself and on his advice a contradiction was given in the office of the newspaper which did not publish it. Asked whether he possessed a copy of the contradiction, Dibakar Deka said that did not give, the contradiction was written by the newsman to his dictation, and so he did not have a copy..Ajoy Kalita has been his local friend. He did not institute any defamation suit as he did not bother because the people had faith in him..Asked why earlier he said he knew about the incident only from the Commission's notice to him and later that he saw the news paper pointed out by Ajay Kalita.(Talukdar) he explained that at that time he did not know Khagen Das and that it was the same case.Ajay Talukdar stayed at Nalbari, but whenever he happened to come to Guwahati, he met him. He has no connection with Any SULFA now. He has heard the name of Shri Jugal Kishore Mahanta and read in papers that he stayed in Usha Court at Zoo road. He does not have any business connection with Shri Jugal Kishore Mahanta. He denied the suggestion that he did not send any contradiction to the news paper. He did not know whether Smti Reba Das sincerely believed that he was involved in the kidnapping of her son.Ajay Kalita* Talukdar) did not inform him that he was undergoing treatment after he was kidnapped.When he was shown the photograph of Ajay Talukdar in the aforesaid issue of "Aji" several parts of the body in bandaged condition, Dibakar agreed that he appeared to have been tortured by someone.Ajay Talukdar did not tell him that

he(Ajay) had to undergo treatment in hospital after he was released by kidnappers. He had no personal enmity with Smti Reba Das and Shri Apurba Jiban Barua ,S.P. He has also read in papers that the incident was caused by some policemen in collaboration with some SULFAs and as directed by high departmental authorities, but he did not know whether it was true or not. ..

N.W, 5 Shri Sainen Hazarika joined the Halbari P.S. as Inspector/O.C. on February 2004 and perusing the case diary found that the predecessor Inspector O.Cs and I.O.s took all the necessary steps, but could not find any clue, and the case was long pending, and hence he thought that submission of F.R would be appropriate and instructed the I.O. Shri Bhuban Gohain to submit such a report which he did on 31.5.04 and was accepted on 2.9.2006. He agreed that the case diary was not maintained in accordance with the provisions of the Police Manual, mainly because it was not paginated and day-to- day entries have not been made, but he did not remark so in the case diary. He did not know that a member of the victim family was in the ULFA and that from the C.D. he learnt that and that Shri Khagen Das was an ULFA linkman, but he did not know if he was in ULFA. He disagreed with the suggestion that even after knowing that there was scope for further investigation, he suggested submission of Final Report. with a view to protect the police and the Sulfas, and that too as directed by the authorities from above in the department, was approved and ultimately accepted by the C.J.M.,Nalbari on 2.9.2006.

P.W. Shri Ajay Talukdar (wrongly mentiond earlier as Ajay Kalita), corroborated Smti Reba Das in the matter that he was also kidnapped by the same miscreants in 3 / 4 Maruti Gypsy vehicles from his Kairara village house at about 4.30 P.M. when he was getting ready to go to play football when the vehicles stopped near their gate, two persons wearing Sporting gangies and army long pants, came to him, asked in Assamese whether he was Ajay Talukdar, they caught hold of him, ordered him to pull off his sporting ganzee, and with it immediately tied his eyes, and also with some other cloth tied his hands, and dragged him to one of the vehicles and drove away; and they kept on driving for about two hours, which direction he could not say. On way the occupants were all along teasing girls passing by the vehicles in most filthy Assamese language and after they stopped what seemed to be near some house, he was brought down and made to descend about 20/25 steps and kept in some room when he was all along been mercilessly and brutally tortured and beaten sometimes uttering that I had link with ULFA. AS a result of the beating he fell down unconscious and did not know what happened.. In the midnight he found himself lying by the side of the National Highway 36 and his eyes were untied, but his hands still tied as earlier, he crawled accross the road and saw a well to do person's house where the fans were on, but none heard him, so he crawled towards the next house which was known to be of some of his boyhood friends, and when called, the two brothers heard his voice and seeing him became gleeful and helped him inside their house, untied his hands and made him lie down on a cot. Being anxious to go home he asked them to take to his home about half a furlong away which they did holding him by both of them on his shoulders and he walking slowly. His wife and brother were overjoyed to find him. However, his whole body was having mortal pains and the applied balms and rendered medical treatment. Later on he saw the Usha Court apartments on Zoo road, Guwahati and said whether that could be the place where he was tortured, he said that he did not see the place that day as his eyes were tied, but he could not rule out that possibility, particularly because by the two hours the vehicle was being driven, it would be possible to reach that place. He also informed the Commision that the 3 / 4 vehicles

were seen by his wife and neighbours, and his wife and some villagers even tried to follow the vehicles, but the armed men stopped them from doing so by aiming and training their arms at them. The fact that the miscreants all the way went on teasing the eves passing by, showed that they were youths of the vulgar type and akin to some other Sulfas of ill repute..

From the above evidence three hypotheses seem to emerge. First, it could be caused, by some extortionist group like the B.L.T, NDFB or some others, as was referred to by the S.P. Shri Apurba Jiban Barua and the D.S.P(H.Q.) Shri Ranjan Bhuyan. Secondly it could be by the SULFA, both because shri Khagen Das was an ULFA linkman and also because Shri Nayan Das @ Naba Das, his younger brother, was in the ULFA. Thirdly, it could be by the State police-SULFA nexus for Ulfocide, i.e., deliberate killing of the Ulfas, their family members and their relatives, as was suggested in cross-examination of witnesses.

The first does not stand scrutiny inasmuch as there is no evidence of any monetary demand made by any extortionist group. The *modus operandi* also does not tally with their's Shri Ranjan Bhuyan, DSP (HQ) said that the economic condition of Smt Reba Das family was not comfortable. Also there being no ransom demand, this hypothesis is unlikely and so rejected..

The SULFA hypothesis appears to be more plausible both because of Nayan Das @ Naba Das being in the ULFA and Khagen Das being an ULFA linkman as stated in evidence. However, the linkmanship had no foundation. The DSP himself was not definite, and the S.P. did not know it earlier. No reference has been made to any records maintained in Nalbari P.S. Not a single instance of any linkmanship has been cited during evidence. On the other hand, Smti Reba Das clearly said that Shri Dibakar Deka was involved in the kidnapping of Khagen Das. There is evidence that the Nalbari Police knew that Nayan Das @ Naba Das was in the ULFA and they and the army frequented that house in search of him. Shri Ajay Talukdar, who was kidnapped by the same kidnapping party that kidnapped Khagen Das, came in 3 Maruti Gypsies catching hold of him, his eyes and mouth were tied with black cloths. The vehicles were driven for about 2 hours, and then reached a house where the two were kept tied in two different rooms of the house, which in all probability, was the then awful Usha Court itself. As Ajay Talukdar was tortured there, so also, Khagen Das could have been.. In another case, one Shri Bhugeswar Teron was also similarly brought, tied and tortured there. While Ajay Talukdar was released, Khagen Das was seen no more. This could not have been caused by Sulfas. Curiously enough, no Sulfa was examined by police in this case. Yet the Sulpha hypothesis, without more, is not reasonably possible. For, the entire activities, namely, being equipped with such sophisticated firearms, the personnel as described in evidence, the vehicles used, the journey to the place of occurrence and capturing the two victims, the journey back to Guwahati, at the night, without being detected by police, and the *modus operandi* would be difficult for them. So this hypothesis, without more, is doubted..

The State Police- SULFA nexus may be tested.. All the aforesaid activities for which the SULFA hypothesis, without more, was doubted, appear to have been easy for the State Police-SULFA nexus, suggesting it to have been part of the State plan of Ulfocide, that is, the deliberate killing of the Ulfas, members of their families and relatives using some selected Sulfas as the striking arms or executioners.. This hypothesis works even if Khagen Das was or was not an ULFA linkman. The case could be treated as a purely ULFA Family case. We accept all the activities of the SULFA kidnappers, including Shri Dibakar Deka.. It is in evidence in another case that Dibakar Deka lodged the FIR at the Geetanagar P.S. in the R.P.G. attack on the Usha Court building, saying that he was a resident of the Usha Court at

that time. In evidence herein, he admitted that he was a Sulfa and he hailed from Khudukuchi of Nalbari. The two kidnappings were in the evening. The two victims were taken in 3/4 Maruti Gypsy vehicles from Nalbari to Usha Court at R.G. Barua Road, Guwahati and they were not detected on the entire length of the journey. What was natural because of the 3/4 Maruti Gypsies were Police vehicles and some policemen must have had been there to assure their safe journey. Ajay Talukdar saw the boys who got down at his compound were armed with sophisticated weapons. There could be no doubt that the assailants were assured of their safety by some State agency.. Without nexus with police, the Sulfas alone could not have done it the way it was done. Ajay Talukdar deposed that throughout the more than 2 hours journey, the assailants had been teasing each and every girl that happened to be seen by them on the road, and that too in most vulgar language in Assamese.. The modus operandi was thus similar to other such Sulfa related kidnapping cases.. For all these reasons this hypothesis is beyond reasonable doubt. Of course the suggestion to this effect was not agreed to by the Police officers examined in the case.

On the basis of the evidence and the hypothesis, the identity of the kidnappers /killers and their accomplices may reasonably be confined to Sulfa Shri Dibakar Deka, and such other Sulfas of Nalbari Police Reserve and of the Usha Court Guwahati as joined the kidnapping party and the concerned officers of Nalbari Police Station, who excited, helped or facilitated the kidnapping/killing at the relevant time.. Despite protective statements of being well guarded, some Nalbari Reserve Sulfas joining the party could not be ruled out altogether..

This case deserves to be revived and re-investigated.

(C) Whether there was any conspiracy in targeting Khagen Das and the motive behind such kidnapping/killing.

This term is replied in two parts,. 1. Conspiracy in targeting, and 2. Motive behind it.

I. Conspiracy in Targeting the Victim. Conspiracy in the context of the instant inquiry, will mean criminal conspiracy as is defined in Section 126A of IPC.:thus..

“When two or more persons agree to do or cause to be done-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

“ A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation.-1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the First report and the same is referred to...The question whether there was any conspiracy or not in the kidnapping/killing of Khagen Das has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that the youngest son of Smti Reba Das was in the ULFA since 1994 and the army and police frequented their house in search of him and that culminated in the taking away of his brother Shri Khagen Das. It is also in evidence that Khagen Das himself was an ULFA linkman, but that was not proved beyond reasonable doubt as no list maintained by the P.S. could be referred to. It could not also be shown that the kidnappers also had known him to be so before kidnapping..That Shri Nayan Das @ Naba Das was in ULFA was a known fact. P.W. Reba Das said that her son Nayan Das @ Naba Das being in the ULFA was the reason for kidnapping of his brother Khagen Das. This falls in line with the other cases of Ulfocide The persons who participated in the act of actual kidnapping on the fateful evening, must have been the instrumentalitty or collaborators with concerned Sulfas at the vanguard. The Usha Court of R.G. Baruah Road was then the abode of som such agents and accomplices and as such, there could be no other answer than that there was criminal conspiracy in the kidnapping/killing of Shri Khagen Das....

There is evidence to show that the SULFAs were enjoying protection from the police. both at the Usha Court and in the Nalbari Police Reserve. This may have had its penumbra on evidnce disabling the police from taking the right action against the SULFA in this case. Indeed, the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an Extra-Constitutional authority.. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in srcrecy, these circumstantial evidence will be relevant and admissible. In the kidnapping/killing of Khagen Das, there were 3 / 4 Gypsy loads of persons, but there was a course of conduct involving the deciders of the course of action culminating in the kidnapping/killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of kidnapping/killing show that there must also have been some authoritative institutional assurance of safety to the killers after the act was completed. Therefore, it is held that there was conspiracy of the worst kind, being among the protectors against the victims they were bound t protect under the law, in this case.

II. Motive behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of P.W 1 that there could be no other reason for kidnapping/killing of her son Shri Khagen Das except for that his brother Shri Nayan Das @ Naba Das was in the ULFA. This statement was not challenged in cross-examination. Therefore, there could be no doubt that forewarners having been a part of the conspiracy .The

then Chief Minister published press appeals to the members of ULFA families to persuade their ULFA members to give up path of violence and surrender. The Army, the CRPF and the Police accordingly advised the families, and also forewarned that consequences of failure to do so would not be good for the family and persuaded the members of Reba Das' family in that line. The fact that there was a request made to the literary organizations and Sahitya Sabhas of the State to persuade the ULFAs to surrender is in the deposition of the then Chief Minister Mahanta. (in another case) A course of conduct by different agencies towards similar persuasuin and the forewarning that in case of failure to effect surrender consequences would not be good for the family of Reba Das, and thereafter finally culminating in the kidnapping/killing support such a conclusion beyond reasonable doubt...Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every citizen to freedom of thought and belief, freedom of association, the relatives need be pressurized to bring their wards back to peace talks, and why relatives who failed to do so should be mentally tortured and reign of terror let loose and when even then they failed, they should be secretly kidnapped/killed? The way in which, and with which Khagen Das had been killed leaves no doubt that the kidnappers/killers enjoyed complete immunity for their acts of kidnapping/killing. The way in which in this case, as in all other cases under inquiry, the investigations were made to fizzle out and the F.R.s (Final Reports) were submitted show that the police has been in collaboration with the kidnappers/killers. All these also prove that the entire scheme was being remote-orchestrated from the top of the department.. Those in helm of the Departments may be held accountable and need be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt. .

The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the kidnappers/killers. The desire of a consequence is the motive for an action. The member of the ULFA family has been executed brutally, for no fault of his, and only for his belonging to the ULFA family of Nayan Das, that was, for a status offence without any sanction of law and in blatant violation of the victim's Legal, Constitutional and Human rights. Intention and motive are often used synonymously. The motive was the perpetuation of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty and dangerous propensity. In Criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material.. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the kidnapping/killing will mean that for which the kidnapper/killer has committed the kidnapping/killing, and without which he would not have done it.

Pinpointing responsibility on persons involved directly or indirectly in the killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is so forthcoming as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond

reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The Best Evidence Rule." Phipson on Evidence," 9th ed. P. 51 under caption "The Best Evidence Rule. Strict Proof" says: "The maxim that 'the best evidence must be given of which the nature of the case permits.' has often been regarded as expressing the greatest Roman law fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, 'In the, present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the corpus delicti may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court'.

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this series of cases is therefore relevant and admissible.

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e., when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7.2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch

of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated (in another case) about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of all the other cases under inquiry are found in this case while answering its terms of reference so as to justify a finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs and their families and relatives, on basis, namely, :

1. That this kidnapping/killing involved an ULFA family, being that of the ULFA Shri Nayan Das @ Naba Das
2. Unlike in other cases, this kidnapping/killing, of Khagen Das were committed in the afternoon light.
- 3.. The assailants covered their faces with black wrappers, to avoid being identified, as was in kidnapping Ajay Talukdar.
4. The weapons used in kidnapping killing were firearms of prohibited bores being bores generally found in police-military situations
5. The firearms being of prohibited bores, forensic examination of the exhibits was avoided..
6. The vehicle used was reportedly Maruti Gypsies which was never seized or detected.
7. There were no police patrolling in the crime areas..
8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the kidnapping/killing, some of the latter being constituted into an Extra-Constitutional authority and used as the executioners, the modus operandi being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send advance team to locate and survey the house, then to send armed and masked persons to shoot /them dead or take them away and kill them secretly and throw the bodies somewhere..
9. There was general resentment against the Unified Command Structure/ Chief Minister..
10. There was connivance of SULFA; and omission even to examine any SULFA herein..
11. The investigation did not commensurate with the seriousness of the crime perpetrated.. .
12. That modern scientific methods of investigation, finger/foot prints were never used.
13. No condolence message was sent from the Govt. of Assam to the victim family..
14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam..
- 15 In this case, if death resulted, it would amount to death penalty being imposed for "status offences," on Khagen Das for being a member of ULFA family of ULFA Shri Naba Das.
- 15 That in all the cases, including this case of Khagen Das, there is remote --orchestration from the top of the Home Ministry, and if it resulted in death, then the orchestrated Ulfocide, death penalty having been imposed on the victim for "status offences," of being member of ULFA family..
16. That from evidence of this case, as in all other cases, "remote- orchestration" of "Ulfocide" is deducible. These common characteristics, along with evidence, prove beyond reasonable doubt, remote orchestration of "Ulfocide" from "Home Ministry, through Police-Sulfa nexus using some Sulfas as the striking arms or executioners. This

conclusion is based on the similarities of the seven cases in almost all respects which could not be so, unless there was remote orchestration from higher authorities. The "kill and get killed" applied to several SULFA leaders..

[On the basis of the evidence on records, the responsibility for being directly or indirectly involved in the kidnapping/killing may be pinpointed on Sulfa Shri Dibakkar Deka and such other Sulfas from the Nalbari Police Reserve Sulfa Camp and the Usha Court resident Sulfas as could be found to have been directly or indirectly involved in the kidnapping/killing of Khagen Das, and such officers and men of the then Police hierarchy up to the Home Minister as may be proved to have been exciting, helping and or facilitating the commission of the kidnapping/killing and for the remote orchestration of the commission of the crime...]

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

[(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed for restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be

maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

. The Army Districts. In para 15 we discussed the structure and functioning of the Unified Command Structure. In course of the Commission's hearing sessions in the Upper Assam district of Sivasagar it was learnt that the Upper Assam districts of Tinsukia, Dibrugarh, Dhemaji, North Lakhimpur and Sivasagar have been declared as Army districts and that, as a result, Army has been operating in those districts. In so far as the declaration is concerned, this Commission has nothing to do. As the Commission has to enquire into some criminal cases of some of those Upper Assam districts, the Commission has to see whether this declaration had any impact on those cases. The Commission proceeds on the basis that during the period from 1998 to 2001 also similar declaration could have been there in those districts, and the Unified Command Structure and the Armed Forces Special Powers Act were necessarily in operation in those districts. If that was so, what were the functions and powers of the Army thereunder would be relevant in the context of prevention of such killings. We have already discussed this, including the leading case, in para 15. The Armed Forces (Assam and Manipur) Special Powers Act, 1958 was amended by the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972; and it is now The Armed Forces in the State of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram Special Powers Act, and it is extended to all these North Eastern States. By section 4 of the Amendment Act 1972, section 3 of the principal Act stands substituted, namely,

"3. If in relation to any State or Union Territory to which this Act extends, the Government of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area."

The Armed Forces Special Powers Act does not enable the Armed forces to supplant or act as substitute for civil power after a declaration has been made under section 3 of the Act. The power conferred under Clause (a) of section 4 of the Act can be exercised only where any person is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or firearms; ammunitions or explosive substances. In other words, the said power is conditional upon the existence of a prohibitory order issued under a law, e.g. under the Cr.P.C. or the Arms Act, 1959. Such prohibitory orders can be issued only by the civil authorities of the State. In the absence of such a prohibitory order, the power conferred under clause (a) of section 4 cannot be exercised. Similarly, under section 5 of the Act, there is a requirement that any person who is arrested and taken into custody exercise of the power conferred by the clause (c) of section 4 of the Act shall be made over

to the Officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

Maintenance of public order involves cognizance of offences, search, seizure and arrests followed by registration of reports of offences (F.I.R.s), investigation, prosecution, trial, and in the event of conviction execution of sentences. The power conferred under the Act only provide for cognition of offence, search, seizure and arrest and destruction of arms dumps and shelters and structures used in training camps or as hide-outs for armed gangs. The other functions have to be attended to by the criminal justice machinery. Thus, the functions in aid of civil power have been ruled by law and not by discretion. The deployment of the Armed forces of the Union in a State does not in any way deprive the people of the disturbed area of the State of their fundamental rights to life and liberty. Any violation of such rights under such provisions would not countenance violation of Constitutional and human rights of the people by the Forces deployed in aid of civil power, nor would it prevent fake encounters from being murders, or a crime from being a crime, punishable under the law.

Throughout evidence the official witnesses say that they kill the boys in self defence. The idea varies, and some seem to be of the view that Ulfas are to be shot at sight. Fake encounters are often reported in news papers. Almost always some obsolete weapons/ammunitions and/or some Ulfa related papers are posthumously put near the dead bodies, obviously for post-mortem justification of the killings. This will not stand on the way of the spade being called a spade...

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail* and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental

and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical. or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner.. While no training course will be appropriate, considering their exalted position and prestige, periodical periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, but using their services as "guides, "spotters". trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the Insolvency principle is not applicable to criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the citizens was effected, and by those whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gratia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning youth of the family has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to Smti Reba Das, mother of the victim, for the benefit of the family, a sum of Rs 5,00,000 (Rupees five lakh only), forthwith.. More than seven years have already elapsed and it brooks no further delay.

**(30)****SHRI LAKHESWAR RABHA KILLING CASE****Dispur P.S. U.D. Case No. 31/99 : Dispur P.S. Case No. 675/99****Date of Occurrence 7.7.99**

By this Commission's order dated, 5.4.3006 by virtue of the authority conferred on it unknown boys came to their Gathiapara house and enquired, in Assamese, by the Government of Assam's Notification No. PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No. PLA 331/2005/1 dated 22.8.2995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry. By virtue of the aforesaid Notifications, the Commission is to inquire into, in each case, the following terms of reference, and any other related and relevant matters with recommendations, if any, namely:

- “(a) Circumstances, in each case, leading to the killing of its victim(s).
- (b) Identity of the killer(s) and accomplice(s), if any.

- (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
- (e) To make recommendations to prevent recurrence of such killing(s)
- (f) Any other matter related to or relevant to the purpose of this inquiry;"

(A) Circumstances leading to the killing of Shri Laksheswar Rabha

On 7.7.99, S.I Shri A.R Barlaskar submitted an F.I.R. to the O.C. Dispur P.S. reporting that during the past night, he, along with a Papa III staff were executing night patrolling duty in Sonailgali, Kahilipara area under Dispur P.S. at about 1.45 A.M. (7.7.99). while they were on duty on Kahilipara Dispur Road, near Power House, A.S.E.B., they saw there 4 unknown youths on a motor cycle and a scooter were coming towards Dispur side and they signalled them to stop for checking, but instead of stopping they turned back and fired on them; and they also fired in private defence and, as a result, one youth fell down with bullet injuries and the others fled away with the motor cycle leaving the scooter on the spot. They immediately sent the injured youth to G.M.C.H. for treatment and immediately informed the higher officers from V.H.F., Panbazar. The injured youth was declared dead by the M.U., G.M.C.H. The F.I.R. also stated that all the four youths were suspected to be members of banned extremist organisation.; and that one M.20 pistol bearing No.31017933656 with 3 Nos live ammunition and loaded magazine with four rounds live ammunitions and a bajaj scooter bearing No. DEF 7973 were received from the possession of the injured suspected banned extremists. Seven numbers of empty cartridges were also recovered at the P.O. which were duly seized along with some incriminating documents. Request was to register a case under sections 307/353/34 I.P.C. r/w 10/19 under Arms Act r/w S. 25(1)(a)/27 Arms Act.. The F.I.R. was received by the O.C at 675/99 under the above sections. (Time not mentioned) However, the C.D shows that the Dispur UD. Case No. 31/99 was registered on 8.1.99 u/s. 143/341/326/3 on basis of complaint of Shri Sailen Pathak s/o Upen Pathak of Hatigaon, Bhetapara. Unnatural death means death which is not natural, without natural reasons, monstrous. Those may be of various types, such as physical, asphyxial, coronary or haemorrhagic nature. The record of that case and the complainant and witnesses need be examined to ascertain which was true. The record of the case was rather scanty. The Post-mortem report from the GMCH dated 7.7.99, which was directly collected by the Commission Office, showed the following injuries which speak for themselves.:

1. Bullet entry wound, size 0.8 cm x 0.7 cm lacerated and inverted margins surrounded by abraded color situated on left side of the head 2 cms above the left eye and 7 cms left from midline. The bullet passes through the scalp, skull bones and brain, and gives rise to the exit wound on the right side of the head, size 1 cm x 0.8 cm over the right ear, that is, 1.5 cm right from midline.. No ligature mark detected around the neck..

2. Bullet entry wound size 0.8 cm x 0.7 cm with lacerated and inverted margins, surrounded by abraded color, situated over the mastoid process. The bullet passes through the scalp, skull bone, and brains, and gives rise to exit wound on the right mastoid bone, size 1 cm x 0.8 cm.

3., Bullet entry wound, size 0.8 cm x 0.7 cm with irregular and inverted margins surrounded by abraded color, situated in front of the chest, right side, 5 cm right from midline. and 3 cm above the right nipple The bullet passes through anterior chest wall, pleura, the right lung and busted the chest wall giving rise to the exit wound right side

According to the doctor, death was instantaneous as a result of bullet injuries on head and body which were antemortem and caused by firearms and were homicidal in nature Approximate time since death 12 to 18 hrs.

H.W.V. Cox in his Medical Jurisprudence and Toxicology 7th ed, at vii, says: "The modern nitro-cellulose type propellants that are now far more commonly encountered. Medico-legal questions in relation to firearm injuries. The kind of firearm used is determined by the size, shape and the composition of the bullet. The examination of the cartridges that are used. A modern criminalistics laboratory with all the modern imaging facilities is a pre-requisite in modern investigations. Infra-red photography for examination of the clothing is a pre-requisite now a days. The furniture and fixtures and the position of the weapons and the posture of the injured at the time of firing have to be considered. The victim's posture may have changed during the killing. In a rifled weapon wound the entrance wound is usually inverted and the exit wound is everted. However, the entrance wound may be everted if it is a close discharge, and the exit wound may not be everted, if there is firm support of the skin. The calibre of a rifled weapon cannot certainly be deduced from inspection of the entrance wound. The most important differentiation is between those caused by smooth bored from those caused by rifled weapons. Contact and very close discharges produce burns, very close blackening of powder or oil and powder tattooing where black powders are used, of course not so much with smokeless propellants."

Description of the injuries indicated that the firings, in this case, may have been from close range. All the three firings were such that the man could not have remained standing to receive the next two firings. Though not with authority, size of the wounds being 0.8 cm x 0.7 cm may be indicative of the weapons being of 9 mm calibre.

(B) Identity of the killer(s) and accomplice(s), if any.

Identity of the killers and accomplices, if any, has to be on the basis of the evidence on record of the case. Accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, law divides the accomplices (parties to a crime) into perpetrators and accessories. An accessory is one who excites helps the commission of an offence by the perpetrator. Perpetrator means exclusively the person who in law performs the offence. More precisely, the perpetrator is the person who being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. The killing of Shri Laksheswar Rabha is not secret as to place and time of killing, but as to the identity of the killers and their accomplices if any; The identity of the killers and their accomplices have to be determined on basis of the evidence on record. It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. Thus accomplices include, while accessories exclude the perpetrator of the crime.

However, often they are used as synonymous. We discussed the meaning of "secret". In para 7 of the Introductory Part 1. Identification of the killers has to proceed on the basis of investigation and evidence. wherefrom, in this case, two shortcomings appear from records, namely, that only routine investigation was made. and modern methods not applied.

P.W. 1 Smti Seuti Rabha's evidence is that Shri Lakheswar Rabha was her husband, then aged 36 years; and he was an employee of the Govt. of Assam in Agriculture Deptt in its statistical branch. At that time he, with their eldest son Shri Digbijaay Rabha, then a Jatiya High School student, at a rented house at Jatiapara in Kahilipara area, while she herself was all along staying at their own house at Gathiapara, P.O. Dhanubhanga, P.S. Dhoopdhara. As the school was closed at that time, he was in his Gathiapara home. One of the younger brothers of Lakheswar Rabha was ill, and he was being treated at the Greenland Nursing home at Ajara. Another brother of Lakheswar Rabha was attending to the patient brother at Ajara, and Lakheswar Rabha was co-ordinating them and the patient. Two days before the incident, Dhoopdhara police came to their Gathiapara house and enquired of his whereabouts, but Lakheswar was not there at home. The witness and the other members of Gathiapara house knew about the incident only from next morning papers. Smti Seuti Rabha categorically said that since about a week prior to the incident, Lakheswar Rabha was supplying food to his ailing brother at the Ajara Greenland Nursing Home; She categorically stated that her husband was at the Ajara Greenland Nursing Home during the night of 6-7.7.99. and he left the Nursing Home in the morning of 7.7.99. This they knew as after the Dhoopdhara police came, they went to the kahilipara rented house of Lakheswar Rabha and did not find him there. but found some cooked rice still there on the cooking pan. Next morning they went to Greenland Nursing Home and the patient and the attendant told that he left that morning and had not returned thereafter. Learning about the incident people from Gathiapara village came to Dispur and they were told that his deadbody was lying at the Dispur P.S., and going there one of their nephews identified the dead body which was handed over to them and it was brought to Gathiapara where the cremation was largely attended. Before handing over the body, the post mortem examination was already completed, and no policemen accompanied the dead body and no policemen attended the funeral. In Cross-examination Smti Seuti Rabha said that her husband was an Ulfas since before their marriage, and he surrendered in 1992 at the Guwahati Circuit House and his surrender certificate was countersigned by the then D.C. and S.P. Kamrup as also by the Commanding Officer of the Army. Neither Ulfas nor Sulfas wanted him thereafter. He wanted to contest from the Dudhnoi Assaembly constituency from the Rabha community. When the dead body arrived home she was told by the people that there were no teeth in the mouth and there were some bullet injuries; and that the body was already decomposed. His relationship with the then sitting A.G.P. M.L.A. Shri Alan Rabha was good; but he did not come to their house after the incident. Lakheswar took interest in socio-political activities of the Rabha. Their eldest son has passed the H.S.L.C Examination, the second, a daughter, is married and the youngest son is reading in Class VII. She herself read up to class X; and poverty has been the cause of their not going for higher education.

P.W. 3 Shri Digbijay Rabha, eldest son of Lakheswar Rabha deposed that On 7.7.99 when he was at his Gathiapara home, villagers came and told that his father's dead body was lying at Dispur Police Station and along with other villagers, his father's nephew Shri Bipul

Rabha came to Dispur, identified the dead body and brought to Gathiapara village wherein it was cremated. He corroborated his mother saying that Shri Tikhna Rabha, youngest brother of Lakheswar Rabha was undergoing treatment at the Ajzra Greenland Nursing Home.. He said that his father came to Greenland Nursing home and went back in the morning to his Jatiapara rented house and thence seen no more. He also corroborated that there were two entry and two exit wounds both sides between the eye and the ear and that policemen were at some distance from the cremation ground and not at the ground itself He said that on 6.7.99 morning two about his father, and left not finding his father at home. Police used to come to their house when Lakheswar was in ULFA, but not since his surrender. In their three-roomed Jatiapara rented house his father, he himself and one of his father's youngest brother Shri Trailukya used to stay, and during vacation he was at Gathiapara home. Lakheswar Rabha used to work in Agriculture statistics office, and scarcely went out on tour. The cooked rice was found at the Jatiapara rented house.

P.W.2 Shri Khanin Nath, aged about 52 years, of village & P.O. Tiplai, P.S. Rongjuli, considered Lakheswar Rabha almost to be his own brother. He corroborated that Lakheswar Rabha was appointed in the Agriculture Deptt of Govt of Assam and his duty was to monitor the Field Management Committees at Dudhnoi, and that in that capacity he could meet the people, and that on his promotion he was posted at Khanapara Statistical Monitoring Cll. in Field Management office. Shri Khanin Nath also was in the ULFA, but joined after Lakheswar Joined, and he has also since surrendered. He used to meet Lakheswar now and then, and he saw Lakheswar's white repainted Scooter, which, somehow, he did not like Lakheswar to continue to possess. He received the news of Lakheswar Rabha's incident from news papers, which described him as Chairman of the R.N.S.F. (Rabha National Security Force) which he did not know; and he did not visit his house thereafter According to the witness Lakheswar Rabha was interested in Rabha history and culture and in maintaining purity and preservation of the environment for the people, and he used to write good poems. His growing popularity among the Rabhas of Dudhnoi created some apparent uneasiness in the mind of the then A.G.P. M;L;A; Shri Akan Rabha who often undervalued Lakheswar publicly. He surrendered in 1975. and was given promise of service which did not happen. Lakheswar surrendered in 1972. Asked whether after surrender he had some apprehension from the ULFA or the public, he said those Ulfas who held some ULFA secrets may have some apprehension from the ULFA, and if they committed atrocities on public, they would not be excused by the public. As he did not belong to either category, he had no apprehension. From some recent instances, he believed that his conclusion is still correct. He discussed with the close associates of Lakheswar Rabha, now some of them in business and some in service and that they all agreed that Lakheswar Rabha's killing was a political one as he was a political potential in Dudhnoi Assembly constituency. The close associates were Shri Jadav Das (O.B.C.), Shri Bishen Kalita, Shri Naren Das, Shri Birbhadra Das, and Shri Debasis Das.. Lakheswar did not collect any funds for ULFA and he was not in discord with it. There was a SULFA organisation, Lakheswar as Zonal member incurred no displeasure of the Sulfas. The registration No. of Lakheswar's scooter was DEF-7973.. Asked as to what created the premonition in him seeing the scooter, as he said earlier, he said he did not know the reason, but seeing the scooter to have been re-painted, some apprehension arose in him. The witness could not rule out the possibility of some Goalpara district Sulfas being involved in the killing..

N.W.1., Md... Asfor Ali, was the then O.C. of Dispur P.S. On 6.7.99, as per their secret information, some extremist elements were moving around their police station area, and they deputed some patrolling parties to keep an eye on such elements; and that at about 2 A.M; on 7.7.99, he received a message from VHF sent by S.I. A.R. Barlaskar, that an encounter had taken place near the power house Kahilipara, and he immediately with Shri Swapan Dasgupta, D.S.P, Dispur Division went to the place of occurrence and on arrival there came to know (from whom?) that the injured person was already shifted to the Guwahati Medical College hospital; and from the place of occurrence one Bajaj Scooter and one pistol and some ammunitions were recovered.. According to the witness, this was reported to them by S.I. Barlaskar who was reportedly present at the time of the encounter. They themselves did not see the action of the encounter and they came to know from S.I A.R. Barlaskar. They were shown the pistol and he did not remember it, but he remembered that the hospital declared the man "brought dead". The case was first registered as an Unnatural death case and then as a regular case. Subsequently they came to know that the person belonged to Goalpara and was a member of R.N.S.F (Rabha National Security Force).. According to the witness it was a practice and convention of that police station to register encounter cases as Unnatural Death cases and also as regular cases., but he did not know its origin. There was no record at the Dispur P.S. before or after the incident that the deceased was a member of the R.N.S.F. and only after the incident it was learnt from S.B. that he was. One question arises, when S.I Barlaskar informed the O/c. about an encounter, he was expected to proceed immediately to ascertain its particulars. It was very necessary not to disturb the situation whereunder the encounter took place. Who, then ordered the injured to be taken to hospital and then by severe the condition of the things then with him? Till then no presence of any higher officer was reported by the Inspectr/O.C. The preservation of the encounter scenario till his arrival was necessary, but that was not done. S.I Barlaskar denied his presence at the encounter in his deposition before this Commission. The Inspector/O.C. was transferred out and he handed over charge on 14.7.99. He said that in Dispur P.S. the system of undertaking operation was different and subordinates had to undertake those as directed by higher authorities who were all present at Guwahati, He did not know that the deceased Lakshwar Rabha was a Govt. employy, or that he was an ULFA even when in Govt. Service. Barlaskar did not give him the details of the injuries and of the other persons who managed to escape, nor the details of the encounter. The recovered pistol and the ammunitions were not sent for forensic examination during his time. He did not ascertain if the pistol was serviceable or not. He did not know that the upper line of teeth of Lakshwar Raha's dead body was missing and that the body was received by the relatives in a decomposed condition. The witness denied the suggestion that the death of the person was caused in some other incident and to cover that up the encounter theory was being falsely set up. .

N.W. 2 S.I. Md. A.R. Barlaskar was an attached S.I. at Dispur P.S. on 6.7.99 and at about 11 P.M that day, the O.C Md. Asfor Ali called him to his office chamber and instructed him to proceed immediately to the place near the Kahilipara Power House where the Addl S.P. Guwahati City and the D.S.P., Dispur Division Shri Swapan Dasgupta were said to be present; and he immediately taking his staff in a Papa patrolling vehicle proceeded to the indicated spot. (This put the encounter time before 11 P.M. of 7.7.99) and met the two aforesaid officers with their respective staffs. He saw one man lying on the road with a scooter nearby. The two officers directed him to take the man to the Gauhati

Medical College Hospital for treatment and to obtain further instruction from the O.C, Dispur P.S. Accordingly he, with the help of his staff, took the man in his Papa vehicle to Guwahati Medical College Hospital. However, the concerned doctor who examined the person, declared him "brought dead". Then he returned to Dispur P.S. with the dead body in the same vehicle at about 1.30. A.M. and the O.C. told him that an FIR was to be lodged, and, in fact one prepared draft was already there and he copied the FIR himself in accordance with what was written there. He did not know what was done at the P.S. thereafter. Only next day, he learnt that an Unnatural Death case, being No.31/99 was registered on the basis of his FIR; and later learnt that another case under the Arms Act, being No.675/99 was also registered. The investigation of the case was entrusted to S.I. Shri Pitambar Das As it was dark, he could not see whether there was any injuries on the person. His staff, on that occasion, (Dispur P.S - Power House- GMCH -Dispur P.S) were Md. Gyasuddin Ahmed and others. Md. A. R. Barlaskar having served as S.I, since 1976, had experience in investigating murder cases. The O.C. did not tell him to go to the Electricity Board Power House as some miscreants were prowling there, but simply told him to go to that Power House at Kahilipara where the two higher officers were already there. Arriving there, he did not see how the man and the scooter, as he saw them, happened to be there. The officers also did not tell him anything about that; they only instructed him to take the man to G.M.C.H. He did not know whose draft FIR, which he copied was... Asked to reconcile what he wrote in the FIR and what he deposed before the Commission the witness explained that what was written in the FIR was copied from the draft FIR as instructed, and what he was deposing was the fact.; and that he had to do so to avoid consequences of disobedience to superior officials. Asked how according to him, the two superior officers happened to be near the Electricity Board Power House, he said that the officers used to go together in operations, but he did not know about it. He denied the suggestion that what he deposed was not, but what he wrote in the FIR was, the correct version. He was entitled to 9 mm Revolver, but that day he was not carrying any weapon with him. His Papa vehicle staff were carrying 303 rifles. There were 3 or 4 of them including Md. Giasuddin. That night there was no patrolling or other duty allotted to him, except what O.C. ordered him to do.

N.W.3. Shri Swapan Dasgupta was the D.S.P. Dispur division, and he was informed about the case by the Inspector/O.C, Dispur P.S. Shri Asfor Ali at about 2 A.M. that an encounter took place at Kahilipara, and on information with the O.C. he proceeded to the Kahilipara Power House and arriving within 15 minutes they found S.I. Barlaskar with a police party there, and he reported that at about 1.40 A.M. some boys coming on one scooter and one motor cycle from Kahilipara side towards Dispur side and they disobeying signal from the police party to stop, started firing at the police party and the police party had to fire at them in self defence whereby one scooterist was injured and he fell down with his scooter and the others escaped. Shri Barlaskar also showed them some arms and ammunitions said to have been recovered from the place of occurrence. He passed over the details to the police control room. Shri Dasgupta said that by the time they arrived there, the injured person was already taken to the GMCH for treatment. He saw the Addl S.P. and the S.P. city there at the place of occurrence when he left for the GMCH, and arriving there, he learnt that the person already died and then he instructed police to take the body to Dispur P.S. The crucial point is that he was not present there when the person was killed. and had not seen any encounter and its details, if any. He did not at all meet Barlaskar near

the Power House. He heard the story from the O.C. Shri Dasgupta was promoted as D.S.P. in 1996. There was no list of ULfas in Dispur Division. It was registered as Unnatural death case by the O.C. He did not examine the scooter, He was transferred from Dispur in the first part of 2000. He monitored the investigation of the case. The Inspector/O.C. supervised the investigation of the case. He joined the Dispur Division in 1998 as D.S.P.

N.W. 4. Shri Prasanta Kumar Dutta, then Addl S.P. City was informed through VSF on 7.7.99 at 2 A.M. to the effect that an encounter took place between the Dispur police and some unknown miscreants at Kahilipara near the Electricity Board Power House under Dispur P.S., and that a miscreant was injured and was already taken to Hospital for treatment, and that the other three miscreants managed to escape under cover of darkness. With his staff he arrived at the place of occurrence at about 3 A.M. and there he met the then DSP(Dispur Division) Shri Swapan Dasgupta and the O.C of Dispur P.S. Md. Asfor Ali.. Both of them reported the incident to him, and he instructed that searches be made at nearby areas for the escaped miscreants, and to proceed to the GMCH for treatment of the injured person. Meanwhile the then S.P. Shri Bhaskar Jyoti Mahanta also arrived and the Addl. S.P.(City) reported the incident to the S.P who also gave some instructions, and both of them left the place. Shri Dutta kept himself abreast of the investigation of the case and issued required instructions. He was Addl. S.P.(City) from May 1999 to July 2001. On his arrival at the place of occurrence, he did not see the injured person there, he having already been taken to the hospital, as reported by the O.C. and the D.S.P. The S.P. arrived there about 15 minutes of his arrival. At the spot he saw some blood stains. The Scooter, he was told, was already removed earlier. He was at the P.O. for about 45 minutes. The crucial point is that he also was not present when the alleged encounter took place. He did not know Laksheswar Rabha prior to the incident, and his subsequent information about him was immaterial. He also did not know that Laksheswar Rabha was an employee in Agriculture Deptt of Govt. of Assam. But he knew that at the P.S. there was nothing to show that he was wanted prior to his death. According to him there was police patrolling in Kahilipara area those days, and that what Shri A.R. Barlaskar deposed before the Commission were not correct, while what he wrote in his Ejahar was correct in fact. However, he did not examine the police personnel who were supposed to have been in the patrolling party, and without the records it was difficult for him to say whether they were examined or not. He admitted that the case was made S.R, and could not say why the other two copies were not available.. He said that encounter cases are not generally registered as U.D. cases, only when the cause of death was not known it was so registered...

P.W. 5 Shri Siddhi Kumar Barua, then O.C., Dispur P.S. for some time, explained that the instant U.D. case No.31/99 was not on the F.I.R. lodged by Sailen Pathak, as his FIR case No.31/99 was a different case on assault and which ended in F.R., and that the instant 31/99 in this matter was also registered on basis of the same FIR lodged by Shri A.R. Barlaskar in a different series than the one registered on FIR of a different date for assault, in Sailen Pathak's case, and the two cases were independently numbered, but accidentally coincided. The explanation is acceptable, So both the Dispur cases were on the Barlaskar's Ejahar..

On the basis of the above evidence, two questions must be clear, namely, 1 why the unnatural Death case was at all registered, and, 2 whether there was an encounter, and if so, between whom?. On the first question the O.C. Md. Asfor Ali said that on the basis of the F.I.R lodged by S.I. A.R. Barlaskar, the case was first registered as an Unnatural death

case and then as a regular case, but why it was so was not explained. N.W. 3 Shri Swapan Dasgupta, then DSP, Dispur Division also said, the case was first registered as Unnatral dath case and later as a regular case, and that was done by th O.C, He said that it was the convention of the Dispur P.S. to do so, but he did not know the origin of the practice..N.W.4 Shri Prasanta Kumar Dutta said that encounter cases generally are not registred as U.D cases. Even assuming that conventionm the person in the alleged encounter was not dead then and there but later at GMCH. Why the Unnatural Death. case?

This makes the matter more curious. If the ejahar lodged by S.I. A.R. Barlaskar, as is being said, What Barlaskar reported was encounter death and not any unnatural death. In his deposition S.I. A.R. Barlaskar said that he was called by the O.C. at P.S. and asked to go to electricity Power House at Kahilipara whre the Addl S.P.(City and the DSP, Dispur Division were awiting him, and when he arrived there, the two superior officers asked him to take the injured person to GMCH for treatment, which he did, but the person was declared brought dead by the M.U and therefore he had to take the dead body back to the Dispur P.S. So by that time the death of the person was known. So, till then the cause of death was not known to Barlaskar and probably that was why the unnatural death case was registered. This puts S., Barlaskar out of the alleged encounter. Thereafter the desiging of the case may have been started and the story of the encounter was concocted and th FIR was drafted in the line. If that was so the encounter theory itself was a post-mortem theory raised another question as to who saw the encounter. The superior officers including the O.C. were not therec. when the encounter took place, If it was an encounter death then why the superior ifficers came to se the vacant space. The injuris on the dead body were such that that the person must have had an instantaneous death two bullets having passed through his scalpm skull and the brain there could nrmally be no idea of sending such a man for treatment Then who sent the dead body to b sent for treatment He would have called the superior officers to show the dead body then and there.. With the denial by S.I. A,R, Barlaskar, the encoubter story has become very brittle.

The next question is between whom was the encunter? All the officers came to the place of occurrence after Barlaskar and none, according to his own version. saw the encounter and the dead body at the place of occurrence.. Barlaskar's own version was that he came there as ordered by the O.C. and coming there he saw the injured person and, as orddered by the Addl S.P.(City) and D.S.P. Dispur Division took him to GMCH. Then who saw the encounter and the dead body thereafter? Did it mean that the man was killed earlier otherwise and to cover that up the encounter theory was concocted, and the hero of the concocted encounter has betrayed that?.

Lakheswar Rabha was in the Ulfa and he surrendered in 1992

He was an Assam Govt mployee in the Agricultural Statistics brancch. P.W. 1 Smti Seuti Rabha said that on 6.7.99 he came to his Jatia rented house from the Ajara Greenland Nursing Home. where on of his brothers was being treated Learning about his death they came to the rented house and found some cooked rice on the cooking pan. Two days before his death two Assamese speaking boys came to his Gathiapara house and enquired of his whereabouts and left when the did not find him there. P.W. 3 Shri Khanin Nath said that the growing popularity of Lakheswar Rabha created uneasinss to he then AGP M.L.A. of Dudhnoi Constituency. Shri Akan Rabha did not respond to the Commission's notice u/s. 8B Shri Khanin Nath did not rule out involvement of some Goalparai Sulfas in the

killing. Lakheswar Rabha himself was a Sulfa. His alleged association with RNSF(Rabha National Security Force) might be a politically motivated circulation. Added to that are the two versions of the Dispur O.C. Md. Asfor Ali and S.I. Md., A,R, Barlaskar, and the tragic bullet-ridden dead body of Lakheswar Rabha.

On the basis of evidence, the encounter theory of the O.C. appears to have holes in it. The details of patrolling have not been stated and proved. Barlaskar himself denied that he was on patrolling duty that night. To belie the written version of Barlaskar himself, he had mentioned the names of some of his staff, and also clearly deposed that he was not carrying his arm on that occasion. In case of encounter, the officer involved, in all probability, would immediately inform his superiors and till their arrival nothing would have been disturbed. He would also have ensured the recording and seizure-listing the material exhibits found with the dead body according to law. This part of the procedure is missing. Here the O.C., with the D.S.P., Dispur Division, arrived together at the place of occurrence and arriving there found that the injured person was already removed to hospital, and they were told about the scooter and recovery of a pistol with ammunitions. But the question is who told them and how could they connect those with the injured person? Was any seizure list prepared, if so, by whom and when? Was it a purely VSF story ? Next question is, on arrival of the dead body at the P.S., G.D. entry 39/99 was registered as an U.D. case. The encounter having already been known the death being the result, how, then, it could be an unnatural death? The D.S.P said it was a convention of Dispur P.S., but he did not know its origin. Could there be a convention in one P.S. out of all, and contrary to law? That too without recording any entry? There was no mention of seizure witnesses...

In view of the above complicated nature of evidence, and in the absence of complete C.D.s to find out the killers and accomplices in the alleged encounter, a lot more investigation and examination of witnesses would be required; and within its limited time, it would not be possible for it to do so. The Commission therefore leaves the matter of the alleged encounter and its officers' involvement, to be decided by itself, if it so advised. The Commission, however, is of the view that there was no encounter, and it is inquiring into the matter to the extent covered by its terms of reference. on that basis.

On the basis of above evidence the identity of the killers and their accomplices may reasonably be limited to the then police officers and men of the Dispur Division and the hierarchy above them up to the top of the Department, and such Sulfas of Dudhnoi and Goalpara, as may be found to have been so involved in the killing of Shri Lakheswar Rabha

This case deserves to be revived and re-investigated.

(C) Whether there was any conspiracy in targeting Lakheswar Rabha. and the motive behind such killing.

This term is replied in two parts, namely, 1. Conspiracy in targeting, and 2. Motive behind killing.

I. Conspiracy in Targeting the Victim. Conspiracy in the context of the instant inquiry, will mean criminal conspiracy, which is defined in Section 126A of IPC as follows:

“When two or more persons agree to do or cause to be done-

- (1) An illegal Act, or
- (2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

“ A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation.-1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the First report and the same is referred to...The question whether there was any conspiracy or not in the killing of Lakheswar Rabha. has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that Shri Lakheswar Rabha was a Government of Assam employee and also a Sulfa having surrendered in 1992. Two days before the killing, two Assamese boys came to the Gathiapara residence of Lakheswar Rabha and enquired his whereabouts not finding him there. It was in evidence that Lakheswar Rabha's ascending popularity was not kindly taken by the then AGP MLA of Dudhnoi. In case the patrolling that night was by Md.A.R. Barlaskar, he himself and his staff will be part of the conspiracy. The persons who participated in the act of actual killing on the fateful night, must have been the same or their agents and accomplices, and as such, there could be nodoubt that there was criminal conspiracy in killing of Lakheswar Rabha...

There is evidence to show that the SULFAs were enjoying protection from the police. This may have disabled the police from taking the right action against the SULFA in this case. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an Extra-constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. . We have already discussed that as conspiracies are often hatched in srcrecy, these circumstantial evidence will be relevant and admissible. There was a course of conduct involving the deciders of the course of action culminating in the

killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy.

II. Motive behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of P.W 3 that Lakheswar Rabha's killing was political. This statement was not challenged in cross-examination. Therefore, there could be no doubt that the killers had been a part of the conspiracy. The then Chief Minister published press appeals to the members of ULFA families to persuade their ULFA members to give up path of violence and surrender. The Army, the CRPF and the police accordingly advised the families, and also forewarned that consequences of failure to do so would not be good for the family and persuaded the members of ulfa families in that line. The purpose was the perpetuation of th A.G.P. rule and Lakheswar Rabha would be a contender in opposition..A course of conduct by different agencies towards similar persuasion and the forewarning that in case of failure to effect surrender consequences would not be good for the family and thereafter finally culminating in his killing support such a conclusion beyond reasonable doubt..Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every citizen to freedom of thought and belief, freedom of association, the relatives need be pressurized to bring their wards back to peace talks, and why relatives who failed to do so should be mentally tortured and reign of terfror let loose and when even then they failed, they should be secretly killed? The way in which, and with which Lakheswar Rabha has been killed leaves no doubt that the killers enjoyed complete immunity for their acts of killing, The way in which in this case, as in all other Goalpara cases, the investigations were made to fizzle out and the F.R. (Final Report) was submitted show that the police has been in collaboration with the killers. All these also prove that the entire scheme was being remote- orchestrated from the top of the department.. Those in helm of the Deparment may be held accountable and need be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt. .

The innmediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. The member of the SULFA family has been executed brutally, for no fault of his, and only for his being potential competitor for Dudhnoi in blatant violation of the victim's Legal, Constitutional and Human rights. Intention and motive are often used synonymously. The motive was the perpetuation of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty and dangerous propensity. In Criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material.. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it.

(D) Pinpointing responsibility on persons involved directly or indirectly in killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The Best Evidence Rule "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that 'the best evidence must be given of which the nature of the case permits.' has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, 'In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the corpus delicti may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court'.

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this group of seven cases is therefore is relevant and admissible,

Best on "The Principles of The Law of Evidence. "(9th ed) in Introduction pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e., when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7.2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by

which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated (in another case) about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of all the earlier cases are found in this case while answering its terms of reference so as to justify a finding of a plan of, deliberate killing of a SULFA on the basis, namely :

1. That this killing involved a SULFA being Shri Lakheswar Rabha.
2. As in many other cases, this killing, of Lakheswar Rabha was committed at the dead of night. some say when there was no patrolling.
- 3.. The killers, by one version were none else than Police officers and men in an alleged encounter. with militants, three others having escaped under cover of darkness.
4. The weapon used in killing were firearms of prohibited bores being generally found in police-military situations
5. The firearms being of prohibited bores, forensic examination of the material exhibits was avoided.. The C.D. was not available except in bare skeleton, and the Investigation fizzled out.., and two police versions claiming acceptance.
6. The vehicle used was a police vehicle which was never seized or intercepted
7. There were police patrolling in the crime areas prior and posterior to, but not during the killing, by one version.
8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in it.
9. There was general resentment against the Unified Command Structure/ Chief Minister..
10. There was connivance of SULFA; and omission to make any SULFA an accused.
11. The investigation did not commensurate with the seriousness of the crime perpetrated..
12. That modern scientific methods of investigation, finger/foot prints were never used.
13. No condolence message was sent from the Govt. of Assam to the victim family.
14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam...
- 15 In this case death penalty has been imposed for "status offences," of Lakheswar Rabha earning rapid fame and favour, garbing him as member of R.N.S.F..
- 15 That in all the cases, including this case of Lakheswar Rabha there was remote orchestration from the Home Ministry
16. That from evidence of this case, as in all other cases, "remote orchestration" of the killing is deducible. These common characteristics, along with evidence, prove beyond reasonable doubt, remote orchestration of the killing from "Home Ministry,

through Police-SULFA nexus. The doctrine of "kill and get killed" applied. This conclusion is based on the similarities of all the enquired cases in almost all respects, which could not be so, unless there was remote orchestration from higher authorities..

On the basis of above evidence the pinpointing of responsibility on persons involved directly or indirectly, may reasonably be on such of the police officers and men of the Dispur Division, and of the City police hierarchy, and such Sulfas of Dudhnoi and Goalpara, as may be found to have been so involved in the killing of Shri Lakheswar Rabha. This is based on the conclusion that there was no encounter, but a cold-blooded murder of Lakheswar Rabha

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed for restoration of normalcy.

Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

The Army Districts. In para 15 we discussed the structure and functioning of the Unified Command Structure. In course of the Commission's hearing sessions in the Upper Assam district of Sibsagar it was learnt that the Upper Assam districts of Tinsukia, Dibrugarh, Dhemaji, North Lakhimpur and Sibsagar have been declared as Army districts and that, as a result, Army has been operating in those districts. In so far as the declaration is concerned, this Commission has nothing to do. As the Commission has to enquire into some criminal cases of some of those Upper Assam districts, the Commission has to see whether this declaration had any impact on those cases. The Commission proceeds on the basis that during the period from 1998 to 2001 also similar declaration could have been there in those districts, and the Unified Command Structure and the Armed Forces Special Powers Act were necessarily in operation in those districts. If that was so, what were the functions and powers of the Army thereunder would be relevant in the context of prevention of such killings. We have already discussed this, including the leading case, in para 15. The Armed Forces (Assam and Manipur) Special Powers Act, 1958 was amended by the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972; and it is now The Armed Forces in the State of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram Special Powers Act, and it is extended to all these North Eastern States. By section 4 of the Amendment Act 1972, section 3 of the principal Act stands substituted, namely,

"3. If in relation to any State or Union Territory to which this Act extends, the Government of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area."

The Armed Forces Special Powers Act does not enable the Armed forces to supplant or act as substitute for civil power after a declaration has been made under section 3 of the Act. The power conferred under Clause (a) of section 4 of the Act can be exercised only where any person is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or firearms; ammunitions or explosive substances. In other words, the said power is conditional upon the existence of a prohibitory order issued under a law, e.g. under the Cr.P.C. or the Arms Act, 1959. Such prohibitory orders can be issued only by the civil authorities of the State. In the absence of

such a prohibitory order, the power conferred under clause (a) of section 4 cannot be exercised... Similarly, under section 5 of the Act, there is a requirement that any person who is arrested and taken into custody exercise of the power conferred by the clause (c) of section 4 of the Act shall be made over to the Officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

Maintenance of public order involves cognizance of offences, search, seizure and arrests followed by registration of reports of offences (F.I.R.s), investigation, prosecution, trial, and in the event of conviction execution of sentences. The power conferred under the Act only provide for cognition of offence, search, seizure and arrest and destruction of arms dumps and shelters and structures used in training camps or as hide-outs for armed gangs. The other functions have to be attended to by the criminal justice machinery. Thus, the functions in aid of civil power have been ruled by law and not by discretion. The deployment of the Armed forces of the Union in a State does not in any way deprive the people of the disturbed area of the State of their fundamental rights to life and liberty. Any violation of such rights under such provisions would not countenance violation of Constitutional and human rights of the people by the Forces deployed in aid of civil power, nor would it prevent fake encounters from being murders, or a crime from being a crime, punishable under law.

Throughout evidence the official witnesses say that they kill the boys in self defence. The idea varies, and some seem to be of the view that Ulfas are to be shot at sight. Fake encounters are often reported in news papers. Almost always some obsolete weapons/ammunitins and/or some Ulfa related papers are put near the dead bodies. obviously for post mortem justification of the killings This will not stand on the way of the spade being called a spade...

Right of Private Defence and Encounter.. The English law excuses a person who has been forced to commit an offence by fear of death or of grievous bodily harm, except in cases of treason or homicide. In India sections 96 & 97 of the Indian Penal Code provide:
S.96 'Things done in private defence. Nothing is an offence which is done in exercise of the right of private defence'
S. 97. "The right of private defence of the body and property. Every person has a right, subject to the restrictions contained in section 99, to defend- first, his own body and body of any other person against any offence affecting the human body; Secondly, the property whether movable or immovable of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass"

S.99. Acts against which there is no right of private defence.-"There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done by a public servant... There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done attempted to be done by the direction of a public servant. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities Extent to which the right of private defence may be extended. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence." The two Explanations are not applicable to this case.

More than two centuries ago, Blackstone, the best known of the expositors of the English common law, taught that "all homicide is malicious, and of course, amounts to murder, unless justified by the command or permission of the law; excused on the account of accident or self-preservation; or alleviated into manslaughter, by being either the involuntary consequence of some act not strictly lawful, or (if voluntary) occasioned by some sudden and sufficiently violent provocation". By the early common law, justification for homicide extended only to acts done in execution of the law, such as homicides in effecting arrests and preventing forcible felonies, and homicides committed in self-defense were only excusable. The distinction between justifiable and excusable homicide was important because in the latter case the slayer, considered to be not wholly free from blame, suffered a forfeiture of his goods. (F. Wharton, Homicide § 3 at 211) However, with the passage of 24 Henry VIII, ch. 5 (1532), the basis of justification was enlarged, and the distinction has largely disappeared. More usually the terms are used interchangeably, each denoting a legally non-punishable act, entitling the accused to an acquittal. Self-defense, as a doctrine legally exonerating the taking of human life, is as viable now as it was in Blackstone's [n. 36] time, and in the case before us the doctrine is invoked in its purest form. But "[t]he law of self defense is a law of necessity;" the right of self-defense arises only when the necessity begins, and equally ends with the necessity; and never must the necessity be greater than when the force employed defensively is deadly. [n. 40] The "necessity must bear all semblance of reality, and appear to admit of no other alternative, before taking life will be justifiable as excusable." Hinged on the exigencies of self-preservation, the doctrine of homicidal self-defense emerges from the body of the criminal law as a limited though important exception to legal outlawry of the arena of self-help in the settlement of potentially fatal personal conflicts. So it is that necessity is the pervasive theme of the well defined conditions which the law imposes on the right to kill or maim in self-defense. There must have been a threat, actual or apparent, of the use of deadly force against the defender. The threat must have been unlawful and immediate. [p. 1230] The defender must have believed that he was in imminent peril of death or serious bodily harm, and that his response was necessary to save himself therefrom. These beliefs must not only have been honestly entertained, but also objectively reasonable in light of the surrounding circumstances. It is clear that no less than a concurrence of these elements will suffice.

Thus, the right of private defence arises on the moment of reasonable apprehension of death or grievous hurt and not otherwise. The imminence of the danger, and reasonableness of the apprehension, and the proof thereof have to be considered. Glanville Williams discussing how imminent must be the danger says: "It is sometimes thought that defence is allowed only against immediately threatened violence. Clearly force may not be used to meet a threat of violence in the future, because it cannot be said that the force is necessary at the present moment. But if there is a present hostile demonstration that violence is about to be used the defender need not wait till his assailant comes within striking distance, or put his finger on the trigger. To this extent the "pre-emptive strike" is lawful. One can imagine a case where the attacker is going off to summon reinforcements and the defender realises that if he does not shoot him now, he will be lost; in such circumstances shooting should be justified." Imminence is implied. It is not reasonable to use force until the occasion arises. Discussing the question whether a mistaken belief would be enough, the author says: "Nearly all the authorities require it to be reasonable. They take the "objective" view that the defendant's honest belief is no defence. to the charge if it was unreasonably arrived at. The right of private defence or self defence has to be exercised reasonably and even circumspectively, particularly when its result is the death of a person. In fact, the right is, in a sense, denied when it results in death of the person against whom it has been exercised. Glanville Williams. in his

Textbook of Criminal Law, asks. "If two men fight, and one says he was acting in self-defence, is not there a formidable problem of proof? Yes, and, in particular, a person kills in what he conceives to appear to be self defence is subject to the serious risk that the emergency will not appear to the jury in the same light that it appeared to him. When looking back at the incident, the fact likely to make the situation impression that a man has been killed, the transitory fear felt by the accused person has left no memorial to compare with the tragic reality of the corpse. If there is a survivor of the incident on the other side, his account of what has happened is likely to differ essentially from that of the accused. Even impartial spectators are unreliable witnesses to a sudden affray that is over in a few minutes or seconds. When the issue is one of self-defence, everything depends on which side was the aggressor, and the temporal order of events is therefore of high importance. But, experience indicate that it is difficult to establish by oral evidence. In particular, witnesses have been shown to have been unable to recall words with accuracy. Hence, there arise two dangers in the administration of the law, unjust conviction and unwarranted acquittal after a concocted defence. Of the two risks, the former has to be taken the more seriously, and for this reason the law casts the burden of negating the defence of self-defence upon the prosecution, only the evidential burden being rested on the defendant. If the case is clearly one of self defence, the Judge will not even allow the case to go to the jury." (P. 449)..

In the context of the (secret) killing cases it would be necessary to ascertain the correct attitudinal/legal approach to the killing of the victim on the part of the army men/policemen. To be precise, seeing one person, whether he was to kill him or to capture him, which he could do even by chasing and if required maiming and disabling him. In other words, did the victim already has reached the end to his right to life and liberty, so that he could be killed or shot at sight?. If the person was already known for certain to have been an Ulfa, could he be shot and killed, and if it was not certain whether he was an Ulfa or not, was it the killer's duty first to ascertain and then deal with him accordingly? Usually, in this part of the country, what is being seen is that the army men, and the militarised policemen, perhaps for being in the same Unified Command Structure, assume themselves to have been required or authorised to kill the suspected Ulfas/extremists straightway.. Very often some make-belief posthumous evidence is laid near the dead body to show or prove that the victim was an Ulfa or in Ulfa mission. This perhaps shows in what casual manner the human right to life and liberty is being dealt with/ defrauded by these some State agencies personnel. sometimes. There is evidence to show that (credit) of killing of boys who are (suspected) Ulfas and/or who are garbed as Ulfas is often related to the officer's prospect of promotion or favourable posting, or Sulfa's encounter specialist's expected favour from the army or police hierarchy. These questions have to be considered in the prevailing background situations, namely, the state of Assam has been declared a disturbed area under the Assam Disturbed Areas Act/ The Armed Forces (Assam & Manipur) Special Powers Act, 1958., and the position that once a disturbed area, always a disturbed area. in the State of Assam. .

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.. The two Explanations are not applicable to this case. Thus, the right of private defence arises on the moment of reasonable apprehension of death or grievous hurt. and not otherwise. The imminence of the danger, and reasonableness of the apprehension, and the proof thereof have to be

considered.. Glanville Williams discussing how imminent must be the danger says "It is sometimes thought that defence is allowed only against immediately threatened violence. Clearly force may not be used to meet a threat of violence in the future, because it cannot be said that the force is necessary at the present moment. But if there is a present hostile demonstration that violence is about to be used the defender need not wait till his assailant comes within striking distance, or put his finger on the trigger. To this extent the "pre-emptive strike" is lawful. One can imagine a case where the attacker is going off to summon reinforcements and the defender realises that if he does not shoot him now, he will be lost ; in such circumstances shooting should be justified." Imminence is implied. It is not reasonable to use force until the occasion arises. Discussing the question whether a mistaken belief would be enough, the author says: ' Nearly all the authorities require it to be reasonable. They take the "objective" view that the defendant's honest belief is no defence. to the charge if it was unreasonably arrived at, seems to have played some part in some of the killings under enquiry. There has been indication in some of the cases that the victims failed to satisfy monetary demands rightly or wrongly made by the authorities who killed them.

Judicial Analysis.. On judicial analysis, I really shudder in finding that the series of Ulfocidal open/secret killings, that have been enquired into, throughout the State, during 1998 to 2001, have been consistent with a then wreckful Home Ministry's State police, in unholy nexus with selected, armed, and protected groups of Sulfas, despite the deployed armed forces and other para military forces of the Union, in the arrangement of the Unified Command Structure, in its three formations, and political administration, in the then State Home Ministry and, militarisation of the State police and the policisation of the deployed armymen, and para military forces, acclimatised by Gubernatorial militarisation, to have contributed immensely towards the killings, resulting in utter degradation of the democratic values and total oblivion of the republican ideals in the State at that time. It may be blasphemous to say that the creation of a group of encounter specialists with exuberance of youth and political patronage, proliferated fake encounters which have proved to be the vanishing point of human, Constitutional, and fundamental rights of Indian citizens in Assam, to life and liberties, and ending in the disaster of Republicanism in this part of the country. Indeed, exposing the innocent population of the State, including the women and children, to the ruthless military operations, in the name of insurgency, in flagrant violation of the Constitutional protection, and the brutal killings of innocent men and women, playing tricks, and garbing them as ULfas, or other extremists, is at the height of State Ulfocide through remote orchestration. All these have to be avoided for ushering in freedom, peace, progress and prosperity in Assam to prevent recurrence of such killings..

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gratia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the

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SHRI AMRIT BHUYAN KILLING CASES

Namti P.S. Case Nos 16 & 17/99:G.R. Case No.646/99.

Date of Occurrence 7.7.99

By the Commission's order dated 12.3.2007, on application dated 24.8.2006 submitted by Shri Saidul Hussain, General Secretary, Asom Jatiatabadi Yuba Chatra Parishad, Kakajan Regional Committee, this case No.17/99 was taken up for inquiry in the interest of justice, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No.PLA 331/2005/1 dated 22.8.2005, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry, with notice to the State Government. The case No.16/99, being on the same incident, has also been taken up together. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference, and any other related and relevant matters with recommendations, if any, namely:

"(a) Circumstances, in each case, leading to the killing of its victim(s).

(b) Identity of the killer(s) and accomplice(s), if any.

(c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).

(d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)

(e) To make recommendations to prevent recurrence of such killing(s)

(f) Any other matter related to or relevant to the purpose of this inquiry;"

(A) Circumstances leading to the killing of Shri Amrit Bhuyan

On 7.7.99 one Shri Lalit Dutta of Namti Kukurachowa village lodged an FIR at the Namti P.S. to the effect that the dead body of a miscreant was found lying by the side of a field at Kukurachowa village with some injuries seen on his dead body which, it said, could have been caused when he fell down from the stolen scooter, while hastening back after being beaten by the villagers. It was mentioned in the FIR that earlier also he submitted an ejahar informing that the miscreant earlier in the evening came to the complainant's house and took away his scooter and when pursued, threatened to explode a bomb. The number of the scooter was ASA 4 A 7072. When they shouted dacoit, dacoit, lot of villagers gathered and chased him and while fleeing, his bag fell down and therein was a bomb and some ULFA related papers all of which had been deposited at the police station.

The Inquest report recorded one injury on the head, behind the forehead, eyebrows were bloodstained, a black spot below the left eye, a stain below the right eye. The right arm above the elbow joint was blackened a similar black spot on the right thigh. One black spot on the left leg below the knee, but did not explain their causes and nature. It did not show that the right 1st finger was cramped.

The post-mortem report of the Civil Hospital, Sivasagar, dated 8.7.99 shows, inter alia,

(i) Diffused swelling 4 cm beneath left side of frontal head just above eyebrow black eye both sides.

(ii) Bruise all over chest both anteriorly and posteriorly.

(iii) Diffused swelling both sides mainly with bruises.

(iv). Diffused swelling of left wrist

(v) Bruise over right finger area.

(vi) Both the knees are diffusedly swollen with brutal marks.

On dissection fracture of the sternum at level of 4th costal level. Corpreant multiple fracture of rib right and left Front chest left side 3rd & 4th ribs and right side 4th and 7th. Multiple laceration of both lungs, black spot of left ventricle open, probably punctured pluerah cavity contain blood about 130-200 mg.(approx)

The FIR whereupon the Namti P.S. case No.16/00 was registered is not found on records of the case. The death, in the opinion of the doctor, was due to haemorrhage and shock following viscerah injuries.

(B) The identity of the killers, and their accomplices, if any

It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or *negligence*. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous.

We discussed the meaning of "secret". In para 7 of the Introductory Part 1. Identification of the killers has to proceed on the basis of investigation and evidence. wherefrom, in this case, two shortcomings appear from records, namely, that only routine investigation was carried on, modern methods were not used; police dogs were not engaged, to sniff out the culprits; foot or finger prints were not taken. Investigation was perfunctory, as important evidence were not taken promptly or not at all. There was also delay in sending the records of the case to the Commission..

The killing of Shri Amrit Bhuyan is not secret as to place of killing, but as to the identity of the killers and their accomplices if any; The identity of the killers and their accomplices have to be determined on basis of the evidence on record.

Smti Phulamai Bhuyan in her application to this Commission dated 29.12.2006 stated that her youngest son Shri Amrit Bhuyan was conspiratorially called by Shri Lalit Ch. Dutta, the then Primary Education Officer, to his residence at Khelua Khanda of Kukurachowa Village on 7.7.99 and, under the leadership of his brother Sulfa Shri Parama Dutta, got him killed by the Government sponsored secret killers, brutally breaking every part of his body and removing the backside of his skull by an axe.

From the case diary it appears that the complainant Shri Lalit Ch. Dutta earlier filed an ejahar to police, to the effect that the unidentified person came to his house at about 6 P.M. on 7.9.99 and demanded his scooter No.AS04/A-7072 criminally intimidating him with a bomb, and despite his refusal, forcibly took it away and when the complainant shouted "dacoit, dacoit", hearing which many people came out with lathis in hand and; in the mean time the youth fell down from the scooter and began to run, leaving the bag with the bomb and some ULFA related documents and RDX, were found in the bag whereupon the Namti P.S. case No.16/99 u/s.392/307 IPC r/w.s..10/13 U.A.P.Act, was registered. The second ejahar was submitted by Shri Lalit Ch. Dutta to the investigating I.O at the place of occurrence at 8.30 P.M. whereupon the Namti P.S. case No. 17/99 was registered under ss. 147/149/302 IPC. The first ejahar is not found on record of this case.. The I.O is shown to have visited the p.o. and performed inquest over the dead body and sent it for post-mortem examination in Civil Hospital at Joysagar; and seized the bag with the IED hand made bomb, which was sent to the S.P.s office at Sivasagar, and later said to have been exploded. The incriminating documents are said to have been placed at the Namti P.S. Malkhana as per C.J.M's order. Vide Namti P.S. Case No. 17/99 u/s.147//302/IPC dt.8.7.99. During investigation the following witnesses were examined by the I.O. Shri Lalit Ch. Dutta, Shri Kula Bora, Shri Deepak Dutta, and Shri Amulya Dutta, all of Kukurachowa village of Gayan Gaon (Kalugaon).

and kept him tied to a cowshade post and brutally killed him with heavy weapons fracturing all his joints and broke his skull with an axe. The witness and her children at home did not know about the incident till the next noon though it came out in local papers that morning. One neighbouring boy came and informed her son Apurba Bhuyan at about noon that the dead body of Amrit was at the Namti P.S., and then grief stricken Apurba Bhuyan with some neighbours proceeded to Namti P.S. and saw the dead body, placed on a smoke coloured Police Jeep, which was then sent to Joysagar Civil Hospital for post-mortem examination whereafter it was brought back to civil hospital, but the Joysagar outpost police refused to hand over the body, but later allowed as, reportedly, permitted Joysagar police to do so. Receiving the body back at home local people took it out in a long silent procession and cremated it in presence of a large gathering. While in the morning papers it was written that the public of Kukurachowa village killed Amrit, the people of Kukurachowa village, about 13 kms away from their house asserted that it was not the Kukurachowa people but the family of Shri Lalit Ch. Dutta did it and to mislead the public such a false allegation was published in the press. The witness did not know that he was an ULFA and said that he passed Matriculation in the First division, joined Sivasagar College, and with some break he passed the Higher Secondary also in the first division. He was a famous singer of the College while a student. and popular among all sections.

P.W. 2 Shri Apurba Bhuyan, said that Amrit was the youngest of their four brothers. He corroborated his mother that though the incident was on 7.7.99 and the morning papers published the news, as they had no papers, until about noon on 8.7.99 when a neighbouring boy informed him that the dead body of Amrit was lying at the Namti P.S. He explained that while the place of occurrence, i.e., Kukurachowa village fell within the Namti P.S. it was about 13 kms away from their house at Gayan Gaon (Kalugaon) which fell within the jurisdiction of Joysagar outpost of Sivasagar P.S. and nearer Sivasagar. On receipt of the information, the witness with some relatives and villagers arrived at the Namti P.S. and saw the dead body placed on a police Mahindra Jeep of smoke colour, and saw the legs below the knees, hanging from the Jeep. as he said Amrit was 6ft/4inches tall. While he was watching at the body one S.I. Second officer told him that it was not the body of his brother Amrit as the first finger of its right hand was cramped, which the witness said, was not the case of Amrit. Then he was shown the first finger and the witness saw that the finger was somewhat crushed and particles of rice and dat still stuck to the first finger and the thumb. Witness then insisted that it was the body of his brother upon which the inquest was held and body sent to Sivasagar Civil Hospital at Joysagar and after post-mortem he proposed to take delivery of the body there itself, but police refused, however, on his insistance they took permission of the then S.P. Sivasagar Shri S.P. Lohia, who, the witness said, took keen interest in the case and even the news item was sent only on his approval. The body was taken home in a private Ambassador car, and at home, it was taken in a long silent procession on the roads, and then cremated in presence of a 10,000 large gathering, The Joysagar outpost police with the I.O. and the CRPF arrived almost at the last stage, and remained at a distance till little before end.. According to the witness, though in the morning papers it was said that the Kukurachowa villagers beat Amrit to death, the Kukurachowa villagers came to the cremation and asserted that the news to that effect was false and that the killing was done by the family of Shri Lalit Ch Dutta, his brother Shri Parama Dutta leading the Sulfas in the killing, after keeping him tied to a cowshed post for two an half hours.. They also said that they saw the usual bag of Amrit

Bhuyan, but did not see any plastic bag or IED bomb or ULFA related documents in it. The witness said that it was correct that Amrit Bhuyan was an ULFA since his student days in Sivasagar College, and appeared in Higher Secondary examination while in ULFA, but seldom came home and his whereabouts were not known to them.; and that about three months before the incident he was called to a place where Amrit told him that he was not surrendering as the Sivasagar SULFAs had been killing people, and, if he joined, he will also be treated as a killer, and he did not like to bring that ill repute to his family. According to him the Sulfas had been troubling their family even after the incident, once his elder sister was being gagged to death by thrusting cloths into her mouth, some policemen of Joysagar outpost also joined in it, but somehow she survived, and another day his elder brother was seriously injured over a neighbouring bridge; and once they even destroyed their crops grown on a Govt. plot. The prominent SULFAs were Shri Pulu Dutta of Deolia Gaon, Shri Lachit Dutta and Shri Tilak Dutta @ Parama Dutta @ Prabhat Dutta were the leaders. Shri Pulu Dutta son of Shri Borbupai once threatened their father to be careful as they had already killed one of his sons, and might kill the others also. Shri Amrit Bhuyan, according to him, was a very amiable person, helping all persons and never liked the killings by treachery and cruelty. The gagging incident was in 1993 when he was at Guwahati and reading the knews he proceeded to Sivasagar and tried for three consecutive days to meet the D.C. Mr. Kapoor it was not ganted interviews so coming to Guahati he met AASU laders who took him to the Governor who assured him of steps, Thereafter the D.C. called him and assured of measures, They lodged an ejahar at the Joysagar outpost but nothing materialised, as the Joysagar policemen were involved in this incident. The army and police used to frequent their house before and after the incident, they used to get a blank paper signed by any of us present at home.. Replying to a question as to whether civillians also used to come with them, he said that on one occasion all of them came in civil dress and they knew them to be army men only when they spoke in Hindi, and it was not known whether some civilians also came, as many of them were surrounding our house while some of them were talking. They came in a private vehicle that day. None from the family was interrogated by police after the incident. They did not apply to this Commission on basis of the newspaper reports of the incident but on actual facts and as advised by well-wishers, after the Commission was set up. The ejahar found in the records of the case is different from one which was shown to him by S.I. Shri Khound at the Joysagar Civil hospital, which was signed by three persons, namely, Shri Lalit Ch. Dutta, Shri Tilak Dutta and Shri Kula Bora.

Asked as to on what basis Smti Phulamai Bhuyan made the allegation that her son was sent for from the house of Deokan Kalita of Sumdar village and that on his arrival Shri Lalit Ch. Dutta, his brother Parama Dutta, a SULFA with his SULFA colleagues caused the death of Shri Amrit Bhuyan, and on what basis he (the witness) supported that statement, Shri Apurba Bhuyan replied that in so far as he knew, his mother Smti Fulamai Bhuyan made her statements on the basis of what the Kukurachowa villagers and other villagers, who came to their house told her, when he (Apurba Bhuyan) was also present and heard what was said.. The villagers were, (1) Shri Mahendra Bora, (2) Shri Lakhi Bora of Kukurachowa village. (3) Shri Rajen Barua of Tingiripam Kohar Gaon, (4) Shri Anupam Sarma s/o Mahendra Sarma of Jotokia Gaon.. Shri Deokan Kalita also came to their house and narrated the story in presence of Apurba and his mother Smti Phulamai Bhuyan., all the members of their family and few of their villagers. Shri Deokan Kalita was

related to them as one of his cousins married a daughter of Shri Deokan Kalita who was an agriculturist. The news of the killing was first given to their family by Shri Rajen Barua of Tingiripam Kohar Gaon in presence of one Simanta Phukan, a SULFA. The distance between their house and that of Deokan Kalita would be about 11 kms; and that between their house and the Kukurachowa Gaon would be about 11/12 kms.

Deokan Kalita also came to their house and narrated the story in presence of Apurba and his mother Smti Phulamai Bhuyan., all the members of their family and few of their villagers. Shri Deokan Kalita was related to them as one of his cousins married a daughter of Shri Deokan Kalita who was an agriculturist. The news of the killing was first given to their family by Shri Rajen Barua of Tingiripam Kohar Gaon in presence of one Simanta Phukan, a SULFA..

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P.W. 3 Shri Rajen Barua of Tingiripam Kohar Gaon had his textiles shop at Namti Chariali. On 8.7.99, opening his shop in the morning, he read in his morning papers, namely, Dainik Janam Bhum, Pratidin and Amar Asom, the news item that ULFA Amrit Bhuyan was killed on 7.7.99 in the house of Shri Lalit Chandra Dutta and in that connection the public of Kukurachowa village were said to have been involved in the killing. Different customers coming to his shop told him that actually the boy was caught and killed in the house of Shri Lalit Chandra Dutta of that village by his family members and not by the villagers as was reported.. Three/four days thereafter the witness heard that Shri Parama Dutta, brother of Shri Lalit Dutta, surrendered before Namti police, but was seen moving freely with Namti policemen, and even came to the witness' shop, and sometimes they used to order that they closed their shops early, which they did. Later the witness wound up his shop at Namti Chariali and shifted to Amguri town. He did not remember the individual names, but all the customers that came to his shop, including the news paper agents, said that the news item was not correct, and that the boy was caught and killed in Lalit Ch. Dutta's house and by his own men.. The distance between his shop and Kukurachowa village would be about 5 kms...He did not know the boy killed, but knew Shri Lalit Ch. Dutta who was primary School inspector in the Khelua Block, and he met him in connection with a music school. The Ulfas did not demand money from those shopkeepers. He knew some Sulfas of the area such as 1. Shri Khirod Hazarika of Namti Bailung Gaon, 2. Shri Himanta Phukan of Misajan Rajabari, 3. Shri Amal Dutta of Dikhounmukh. 4. Shri Dhiren Saikia of Namti Bailung Gaon, 5. Shri Dhan Dutta of Namti Station Chariali, All of them have now been in business and Shri Khirod Hazarika has been their leader. One Shri Lakhi Bora, son of Shri Mahendra Bora of Kukurachowa Gaon was known to have been arrested by Namti police in connection with the case, but was later seen to have been released.

P.W. 4, Shri Keshob Gogoi, aged about 34 years, has steel and wooden furniture business at Namti Chariali where people going to, and coming from, Sivasagar used to meet and discuss things and that was how he came to know developments there..and on 7.7.99 itself at about 1 P.M. that Shri Amrit Bhuyan, who was his class friend, was being kept tied in the house of Shri Lalit Ch. Dutta, Primary School Inspector of Khelua Block, at his Kukurachowa Village house, about 5 kms away from Namti Chariali..They were afraid of going there as in those days secret killers used to ply Maruti Gypsies covering

their faces with black cloths and they were unable to do anything. Next morning the paper "Pratidin" published that Amrit Bhuyan was beaten to death by Kukurachowa villagers. Later he learnt that Amrit's body was brought to his house. Amrit was his class friend from Class V to XI. but not thereafter till his graduation. Amrit was a good and meritorious student. He remembered the details of the newspaper report and that everybody said that in fact he was killed in Lalit Dutta's house by his men. He knew that Amrit had good relation with Shri Lalit Dutta as on occasions Amrit used to take the witness with him to Lalit Dutta's house when they were students of the Piali Phukan College. The story told by the people was correct as one Pranab Deka who then worked in Kukurachowa village saw Amrit being kept tied to a cow shed post in Lalit Dutta's house before he was killed. He met Shri Lalit Ch. Dutta even after the incident in the matter of a Sangeet Vidyalaya, and found him good. He, and the people knew Shri Parama Dutta to be a dacoit. Parama Dutta's house was about two doors away from that of Lalit Dutta. While the witness was in Piali Phukan College, he used to see one person kneeling down, holding his ears, and on his shirt were written "fake ULFA, dacoit, thief" and the like, and he learnt that the very person was Parama Dutta. He met Parama Dutta about a week after the incident when he with few others came to his house, beat him and his father and one of his colleagues chased, and caught a swan of theirs and took it away without paying anything. There was a case of one ULFA killing incident where the dead body of one Prabin Gohain was found at Amguri roadside and at that time secret killers prowled about the area, A.K.47 rifles in hand. Army were also seen on the road and such an armed party used to come out of the Namti P.S. and roam the villages and that the people believed that the secret killers were a combination of Army, police and the SULFAs. His impression was the same as of the people of the area, that Police and SULFAs, Parama Dutta and his colleagues caught hold of, kept tied to a cowshed post, arranged the feast and killed him brutally in Lalit Dutta's house and not as reported in the newspapers. ..

N.W.1 Shri Pradip Kumar Dutta was acting as O.C. of Namti P.S. when the first ejahar of this incident, signed by three persons, was received from Shri Lalit Ch. Dutta and thereupon the Namti P.S. case No 16/99 was registered u/s 392/307 I.P.C. r/w s. 10/13 of the Unlawful Activities Prevention Act r/w section 5 of the explosive substances Act. and he himself took up its investigation. As the investigation of that case was proceeding, another ejahar was received from the same Lalit Ch. Dutta whereupon the Namti P.S. case No. 17/99 was registered under ss. 147/149/302 IPC and he himself took up its investigation also. He proceeded with investigation of both the cases and arriving at the place of occurrence found the dead body lying in the open field of Kukurachowa village. He himself performed inquest over the dead body in presence of the village public. After examining some villagers, the dead body was brought to Namti P.S. and as it was already dark, it had to be kept there for the night and was sent next day at about 11 A.M. to Sivasagar Civil Hospital at Joysagar where it was identified by Shri Apurba Bhuyan to be that of his brother Shri Amrit Bhuyan. and the post-mortem report was received at about 3 P.M. on 30.8.99. The C.I., Nazira submitted the final progress report on 27.10.99 and on 3.12.99 the Final Report was submitted and was accepted by the C.J.M. on 7.1.2006. ..

The first FIR whereupon the case No. 16/99 u/s. 392/307 r/w s.s 10, 13-UAP Act, was submitted by Shri Lalit Ch. Dutta. at Namti P.S., and when the O.C. investigating the case came to Lalit Ch. Dutta's house, the second FIR was lodged there, and the O.C. investigated that case from the village field outside the Lalit Ch. Dutta's house.

compound. The O.C. found the dead bdy in the village open field, and the scooter was lying about 10/12 ft. away from it and about 150/200 yards away from Lalit Dutta's house. The O.C. who was investigating the case 17/99 said that there was no seizure list in that case. Some materials were seized in 16/99, but no materials were seized in 17/99. The scooter was seized in 16/99 and not in 17/99. The places of occurrence would be about 10/11 kms from Namti P.S.. The O.C. stated that when the unidentified boy demanded Lalit Dutta's scooter, it was at the varendah of his house. When Lalit Dutta refused to give him his scooter, the boy kicked him and he fell down, and the boy took away the scooter when the inmates shouted "dacoit, dacoit" and the villagers came out and beat the dacoit to death. In the case 16/99 only Shri Lalit Dutta and his wife and school-going children were the witnesses, and they were examined in case 16/99, and not in this case.. To see why the first information received on 7.7.99 was not treated as the FIR for the whole case, and how the second FIR could be the basis of the same incident, the Commission called for and received the records (43 pages) of Namti P.S. Case No. 16/99. The original FIR has not been found therein. The FIR as copied in the C.D could be translated thus:"

"Today on 7.7.99, at about 6 P.M. one unknown youth entering our house wanted my scooter. When I refused to give my scooter with the intention to kill me, he strangled my

neck. With great difficulty I freed myself from his hands. Then he threatened to finish me with bullet. Then he took the scooter from our house, started, mounted it, and drove it away. Probably after covering some distance because of darkness for some difficulty he fell down from the scooter and most probably sustained some injuries. Meanwhile hearing our shouting dacoit, dacoit, people from all around came out and the youth tried to run away, in the process his bag fell down. Looking at the bag we found one bomb like object, one meter like thing and something like a Jug and some Ulfa-related papers. From all these it could be known that the miscreant was an ULFA. Lot of people chased him and what happened was not known."

To complete the mental process, we may juxtapose the FIR in P.S. Case No. 17/99

"The dead body of the miscreant of whom I already informed, meanwhile, has been found lying by the side of the Kukurachowa village road, and some injuries have been noticed on the dead body. It is possible that those might have been inflicted by the chasing Kukurachowa villagers after the alarm created by us and that might have resulted in his death.. Be it said that I already informed earlier that one unknown miscreant came to our house and threatened us to blow up with a bomb. When he was fleeing with our scooter No. AS04A-7072, on our shouting as dacoit, dacoit, large number of people from our village came out with cudgels in hand. Unfortunately, after covering some distance, the miscreant fell from his scooter and his bag also fell down and seeing the crowd he fled away leaving the bag behind. The bag and the incriminating documents and the bomb have been deposited at the Thana".

Shri Pradip Kumar Dutta, examined as N.W 5 in connection with case No. 16/99 deposed that on 7.7.99 at about 7.30 P.M Shri Lalit Ch, Dutta himself came to Namti P.S. and lodged the FIR whereupon the Namti P.S. Case No 16/99 u/s. 392/307 r/w/ S.10./13 of the Unlawful Activities (Prevention) Act r/w s. 5 of the Explosive Substances Act was registered. Shri Lalit Dutta also produced before him a black bag containing some Ulfa-related documents and a steel Jug about 15/18 inches in height with a flexible wire

stemming from inside which looked like a bomb. At the same time the then S.P. Shri P.K. Lohia telephonically instructed the I.C. to proceed to the place of occurrence immediately, saying that he was also proceeding thereto. and accordingly, leaving the article deposited by Shri Lalit Ch. Dutta in charge of the Police Station security, the O.C. proceeded to the place of occurrence with Shri Lalit Ch. Dutta. Arriving there at 8.10 P.M. the O.C. inspected the village football field, found a Vespa scooter there, seized it. Shri Lalit Ch Dutta told him that "his ash coloured Vespa scooter which was at the varendah of his house, at about 6 P.M. an unknown youth, entering his compound wanted his scooter, and when he refused, the unknown youth with the intention of killing him strangled him at his neck and when somehow he saved himself, the unknown youth threatened him to blow him up with a grenade. and took away the scooter from his varendah and drove out, but on the kutchra road the scooter developed some trouble and the rider fell down, and when Lalit Dutta shouted "dacoit, dacoit" hearing his shouts, people from all around arrived at the field, and the scooter was still lying there and he seized it and left it in custody of Lalit Ch. Dutta. Then he examined witnesses from Kukurachowa village, namely, Shri Amulya Dutta, Shri Kula Bora, Shri Ajit Bora and Shri Sarat Dutta and all of them said that they did not recognise the youth. The O.C. added: "On further search, a dead body was found lying by the side of the Kukurachowa village road at some distance from Lalit Ch. Dutta's house and the dead body was lying in a pool of blood and the complainant Shri Lalit Ch Dutta was brought there and shown the dead body and Shri Lalit Ch Dutta said that the dead body was of the very person who entering his compound took away his vespa scooter"

Meanwhile, the S.P. Sivasagar District Shri P.K. Lohia and the then Addl S.P.(HQ) may be, Shri Trailukya Gogoi, and the C.I., Nazira Shri Hari Prasad Khanikar also arrived and took stock of the situation. "At that stage Shri Lalit Ch Dutta submitted another FIR giving the details of the incident at the place of occurrence near the dead body. Thereafter the S.P., the Addl S.P.(HQ), the C.I. Nazira, himself (the O.C.) and his staff along with the complainant came to the Namti P.S. at 10.30 P.M. At the P.S. the superior officers were shown the black bag with Ulfa-related documents and the steel jug which were earlier deposited by the complainant with the first FIR. Those articles were then seized, as those were not seized earlier. He also examined Shri Lalit Ch Dutta, Shri Kula Bora and Shri Deepak Dutta at the P.S. and their statements were recorded. Shri Lalit Ch Dutta was medically examined at Namti Primary Health Centre on 8.7.99. On 17.7.99 those seized articles were shown to the C.J.M., Sivasagar and bringing those back, were sent to Namti P.S., Malkhana. On 14.9.99 on application the C.J.M. ordered for disposal of the bomb. When the order was shown to the S.P. he ordered the I.O. to contact the Joysagar Army Camp. Captain Shri Rajiv Ray and ultimately those were exploded. The Final Progress Report was submitted by S.P. Khound, C.I. Naxira on 25.11.99 with suggestion to return the case as to u/s 392/307 I.P.C. r/w S.10/13 U.A.P. Act r/w S.5 of ESA but the accused died. In cross, the witness said that no copy of the G.D. entry was there in the C.D. and he did not remember its contents. The copy of the FIR was not there in the C.D., as the same was sent to Court Shri Nripen Khound was A.S.I, Namti P.S. at that time. The O.C. noticed the differences between the two FIRs in Cases 16 and 17/99 and, therefore, he investigated the cases differently, the dead body not being there in the first but was there in the second. None led him to the dead body which he found out by himself and none else was there.. On being shown that Shri Lalit Ch Dutta said that after the miscreant took away

the scooter, he and his wife and children shut themselves in and did not come out at all, the O.C. said that what he had written were the true facts. He did not hear of Shri Parama Dutta having surrendered as Ulfa, but he had a number of arrest warrants against him which he could not execute as he was not found at home nor did he hear of his capture by Commandos..

N.W. 4 Shri Parama Dutta was at Tamlu Basti of Nagaland, about 7 kms from the Assam Border, (southern) on 7.7.99, with three other Ulfas, namely Shri Debajit Konwar of Mahmora, Shri Sujit Mohan of Mahmora, and Shri Rakta Plaban Chetia of Dibrugarh. Receiving the information on 9th or 10th of July, 99 that one of his Ulfa colleagues was killed in Kukurachowa village, all the four of them proceeded towards Assam through Athkhel Deopani and reached Assam Border at Athkhel Geleki and stopped at the three road crossing at Kukurachowa village, and while the three others stayed there, he proceeded towards his house through a forest and tea plantation and reached his house and was embraced by his wife and children, but suddenly some black commandos appeared and surrounded and asked if his name was Parama Dutta @ Ractim Burhagohain, on his answering yes, asked whether he had any arms in possession, he threw away his .38 revolver and they arrested him, took him near the S.P. Sivasagar, Shri P.K.Lohia, thereafter he was kept with the Black Panthers at Namti P.S. and he provided informations about the Ulfas and their activities. He was constantly tortured for three months whereafter he was allowed to come home. He was given an identity card but no surrender certificate. Shri Parama Dutta clearly said that he heard that Amrit Bhuyan was killed in the house of Shri Lalit Ch Dutta of Kukurachowa village.. He stated that he joined the ULFA in 1982 as Corporal, became Lance Corporal, Sergeant, Sergeant Major, Second Lieutenant, Lieutenant, Major and then became Captain. in 1997.. He got love-married in August 1982. His attention was drawn to a statement made before the Commission by P.W.4 Shri Keshob Gogoi that during 1990 he was studying in Peoli Phukan College they used to see one person kneeling down and holding his ears and they saw on his shirt several writings saying he is a "fake ULFA", and other words like "Dacoit" and "thief" on his back, and his hair was also irregularly clipped and they saw him constantly at Namti Chariali and were told that he had been punished by ULFA that way for his offences. To this Shri Parama Dutta replied that in 1990 he was outside Assam, somewhere in Burma, Bhutan or Nagaland, and was member of ULFA organisation and he suffered a lot, and after making so much of sacrifice he was sorry to have been described as above.. He was released after about seven months of his arrest, and after release he did not enquire as to how Amrit Bhuyan happened to be killed, and by whom in the house of his uncle Shri Lalit Ch Dutta. In ULFA he was running a Battalion and it was difficult for him to come to Assam which in ULFA vocabulary was referred to as "Assam Command". According to him, he belonged to the selected ULFA cadre of ALA since 1985 and his family was paid Rs.25,000 per month at his home through ULFA Civil Cadre. When attention of the witness was drawn to the statement of Shri Lalit Ch Dutta that he did not know whether Parama Dutta was either in Ulfa or in Sulfa, Parama Dutta said that Lalit Dutta being his uncle, he had no comment to make.

Shri Lalit Ch, Dutta while deposing before the Commission stated that after he freed himself from the attack by the miscreant, he and his wife and children kept completely indoors and did not see or know what followed. This was quite contrary to the imaginative

narrations found in the two ejahars. There has not been a single witness of what were imagined in the two FIRs.

All the witnesses deposed that Amrit was killed in the house of Shri Lalit Ch Dutta and the Kukurachowa villagers had nothing to do with it, and it is unreasonable to disbelieve all of them..There was no blood stain/trail on the ground, but there was blood in the mouth, nose, ears and eye brows of the dead body as found in post-mortem examination..Who participated in the alleged beating of the person could not be ascertained as none spoke about it. There were about 15/20 houses in that 'chuburi' of Kukurachowa village, but only 3 or 4 persons were examined and none could give any information about the incident. Even Shri Parama Dutta against whom the witnesses were not examined.by police. who said that there was a warrant of arrest against him.

N.W. 3 Shri Lalit Ch. Dutta, by profession an Elementary Education Officer, aged about 55 years, deposed that on 7.7.99 attended his office, then as Sub Inspector of Schools, at Nazira and was back home at about 5 P.M.when a boy entered his compound and tried to enter his house, but he resisted by shutting its door, and the boy tortured him, caught hold of his neck and kicked him on his knee, and escaping from the boy he entered inside his house, closed its door, and the boy took away his scooter with its key on, from his courtyard. According to Shri Dutta, there were 20/30 persons near his gate, but could not say who were they and what for they were there, but he said that they shouted, though he did not know how or in what words, perhaps "dacoit dacoit" Then he closed the door of his house and remained indoors. He wrote and sent the FIR at about 7.30 A.M. through his nephew Shri Amulya Dutta to Namti P.S. about 4 kms away from his house.. According to him, the Namti police arrived his house at about 9 P.M and first seized the scooter papers, then took him to the village football field, about 300 metres away from his house. where the police pointed out a Jug about 12/15 inches in height, but he did not see what was inside the jug..Shri Dutta clearly said " I did not see the boy there.I did not know if anything else was found there. The boy was not there. I did not see the boy there and the police told me that they were still searching for the boy."Then full security was provided, search light was fixed, army vehicles came, and the then S.P Sivasagar came and talked to him and suggested him to go to Sivasagar for safety, but he did not like to leave his house.The police and the Commandos stayed in the field throughout the night on the field. According to the witness, the police found the dead body. by about 10 P.M and informed him that the dead body found could have been that of the boy who took away his scooter, and then the witness thought it proper to lodge another FIR, as the first one was signed only by him and none else. He wrote this FIR by 11 P.M. and sent it to Namti P.S. next morning on 8.7.99 at about 5/6 A.M.whercafter at about 9 A.M., O.C Namti P.S. came to his house and recorded his statement. In cross he said that he used that scooter for attending office and did so on 7.7.99 and was back home by 5 P.M. kept the scooter and went to the Sraddha of his uncle aabout 300 metres away. No outsider was there when he left his scooter at his house. The boy tried to enter his house after his return from Sraddha When the boy was strangling him, he saw on the boy's back a black bag slightly bigger than a school bag.He never saw the boy earlier. He was unable to say who shouted "dacoit, dacoit" and why they shouted. After half an hour of his scooter being taken away he came out of his house. When he came to the field with police, he saw the black bag near the scooter. He did not see the dead body, but he thought within his mind that it was of the boy who took away his scooter.He was silent

when shown that the FIR(2nd) was received on 7.7.99 when he came to the field to meet the S.P, the dead body was not there. In face of his statement that ,being afraid, he did not see the dead body, he was shown his signature as witness on the Inquest Report, he said that police brought it to his house and he signed the Report there. when the inquest details were not there.. Asked if police recorded his statement in the case he said that when the S.P. and the O.C. were in the field, they took the narration of the incident from him, but he did not know whether it was recorded in writing or not. He admitted that in his statement u/s. 161 Cr.P.C. he said: "The miscreant came and demanded my scooter and on my refusal he tortured me by holding my neck and picking up my knee and took away my scooter and when there was a shout dacoit dacoit, the villagers came out with lathies and and they had beaten the boy to death". He denied the suggestion that actually the boy came to his house on invitation and his men had beaten him dead at his house. He possessed a small tea plantation managed by his nephew Amulya Dutta and his daughter. He admitted that Shri Prama Dutta was his nephew and his family suffered much for him. Police often took and placed him in jail. When the S.P. came he also asked if he was his relative and he replied yes. Shri Parama Dutta was said to have surrendered in this case, but evidence showed that he was moving with the Namti police after the incident. Parama Dutta's wife told the witness that he did not stay with her. He did not see any Kukurachowa villagers in the field when the S.P and the O.C. were there. The witness was asked by the Commission whether he proposed to cross-examine smti Phulamai Bhuyan and Shri Apurba Bhuyan, he said he would let the Commission know later. But nooooo such request came thereafter.

Though a Primary school Inspector, Shri Lalit Dutta had a small tea plantation which was managed by his nephew Shri Amulya Dutta who also used to stay with him. and was present at the time of the incident. He did not enquire about the key of the scooter. The case diary contained only 2 entries on 7.7.99 and 8.7.99 and no more, The F.R. (Final Report) was submitted on 3.1.2000 and accepted on 7.1.2000. Parama Dutta did not surrender before police. The O.C. denied the suggestion that Shri Anrit Bhuyan was killed in the house of Shri Lalit Dutta, where he came, with the help of Parama Dutta and other SULFA men and for concealing the truth they concocted this story and placed the dead body in the village field along with the scooter, the materials and the so called explosives posthumously near the dead body, and knowing this police did not investigate the case according to law and hurriedly submitted the Final Report and got it accepted. The witness also denied the suggestion that the First FIR included the entire incident and case No 16/99 was enough, but to suppress the main offence the second FIR was got up and Case No. 17/99 was separated and ultimately both ended in Final Report by police.. Shri Kula Bora said that he heard the members of Lalit Dutta's family shouting "dacoit dacoit". This would not be inconsistent with the theory of placing the dead body in the village field. Shri Lalit ch Dutta himself said that having retreated inside neither he nor his wife and children had seen anything thereafter. No witness deposed to having seen anything other than the scooter near the dead body. The scooter was 11/12 ft away. All other things were posthumous deposits which, Shri Lalit Dutta said, he deposited at the Police station. which, even if true, would mean that those had nothing to do with the dead body. Some of the witnesses mentioned about there having been a feast being thrown at Lalit Dutta's house, while Shri Dutta admitted the feast, but said it was on the occasion of the Sraddha ceremony of his uncle at their house. Besides P.W.s Phulamai

Bhuyan and Shri Apurba Bhuyan, Shri Mahendra Bora and Shri Lakshi Bora of Kukurachowa village corroborated that Amrit Bhuyan was called that day by Shri Parama Dutta and he was going to Lalit Dutta's house, as Parama Dutta used to stay there. There is also independent evidence that after their house was burnt, Parama Dutta and his wife used to stay with Lalit Dutta. There has been discrepancy as to where the second FIR was lodged, the police version being that it was lodged at the house of Lalit Dutta when he came there, but Shri Lalit Dutta deposed that he lodged it at the Namti P.S. on 8.7.99 through Amulya DDutta. There is evidence that the then S.P came to Shri Lalit Dutta's house in the night of 7.7.99 and provided full security to him.

N.W. 2 Shri Sashadhar Bora was the D.S.P. (HQ) said that he had nothing to do with the case as he was not asked to supervise its investigation, and consequently he never saw the case diary. Asked about his responsibility as D.S.P.(HQ), he admitted that he had the general responsibility, but unless asked by the S.P. he could not move, and the S.P. differentiated between the directly appointed officers and the promotee officers, and his behaviour towards him, as a promotee officer was not good, for which he even opted for being S.D.P.O. at Bokakhat. Even in office the S.P used to talk in code language with directly appointed officers so that they (promotees) could not understand, e.g., in another case, when they talked "four wickets down," they did not understand, but later when he was asked to bring four dead bodies laid in a drain of Haluating Tea Estate, near Amguri, he understood what they talked about. Incidentally, this perhaps indicated that every operation was a cricket match and its success was to be gauged by how many wickets of the opponents were down. On 7.7.99 he was already under order of transfer to Bokakhat as S.D.P.O and no files were with him till he moved thereto on 20.7.99. His view was that when the first FIR mentioned the incident, and thereupon the Case No.16/99 was already registered, the second FIR on the same subject, should not have been made the basis of another Case No,17/99..

P.W. 5 Shri Mahendra Bora, aged about 71 years, was a permanent resident of Namti, Kukurachowa village. On 7.7.99, he was at Sivasagar Colony in search of his son, who was then in ULFA and bringing him, being afraid, he handed him over to the O.C. Amguri P.S. so as to protect him from being harmed by the Sulfas. On 8.7.99 when he went to the Namti P.S. to enquire about a boy, he saw the dead body of Shri Amrit Bhuyan being brought to that P.S. in a Police vehicle. The witness said that Amrit Bhuyan was friendly with his ULFA son and used to come to their house now and then, and that on 7.7.99 Shri Amrit Bhuyan came to their house and his wife offered him a cup of milk, when he told that he was being called by Shri Parama Dutta and he was going to Shri Lalit Dutta's house.. That was at about 12/12.30 P.M. Shri Mahendra Bora, categorically said that though the news papers reported that Amrit Bhuyan was beaten to death, by the Kukurachowa villagers, in fact he was killed in the house of Shri Lalit Ch. Dutta by his own people. He said: "Of course I was not an eye witness to the killing, I knew Shri Deokon Kalita who also belonged to our village. Shri Deokpn Kalita was related by marriage relationship to Amrit Bhuyan's family and he used to visit Deokon Kalita's house now and then". He knew Amrit Bhuyan to be a good student and he passed Matriculation examination with several Letters and he did not hear his harming any person. though he might have been in the ULFA. He did not know whether Amrit passed the Higher Secondary Examination, but he never heard his harming any person in any way. In cross he said that his son Ramen was the only ULFA from Kukurachowa

village at that time On 7.7.99 he was in the ULFA. He said that none of the villagers were near the house of Shri Lalit Chandra Dutta and near the dead body, as all were afraid of Shri Parama Dutta "a dangerous person". Amrit Bhuyan did not serve any demand notice on any Kukurachowa villagers. and he never took any bicycle or motor cycle from any Kukurachowa villagers. He was always on his own old bicycle. and was never seen driving a scooter. On 7.7.99 Amrit went to the witness' house on his own bicycle.

P.W. 6 Shri Lakhi Prasad Bora, son of Shri Mahendra Bora, aged about 24 years, by profession a driver, was permanent resident of Namti Kukurachowa village On 7.7.99 he went to the Sivasagar Bazar on his bicycle, when he was returning after dusk, and as he arrived at Bargash Tinali near Kukurachowa village, he saw an assembly of some persons and some policemen there. The Tinali is in front of Shri Lalit Dutta's house and he saw some persons in Lalit Ch. Dutta's house, and someone told the police that he was brother of an ULFA and should be detained, and he was made to kneel down on the field, when he saw the dead body of Amrit Bhuyan near Lalit Dutta's gate, but there were no other person there except the members of Lalit Dutta's family and no scooter was seen nearby. Then seeing a vehicle approaching, and suspecting it to be a SULFA vehicle. one constable allowed him to go home wherefrom next morning he was taken to Namti P.S. when Amrit Bhuyan's dead body arrived there in a police vehicle and he was asked to bring it down and he did it. .

S.I Shri Khound of Joysagar outpost at the time of identification of the dead body at Joysagar Civil Hospital showed Shri Apurba Bhuyan the first FIR submitted by three persons, namely, Shri Lalit Ch. Dutta, Shri Tilak Ch Dutta and Shri Kula Bora, who signed it. However, that FIR is not available on records. This is indicative of concoction of the case both before and after the first Ejahar was submitted. The first one was the FIR and not the second or any subsequent. information thereafter. Final Memo vide G.r. 0646/99 W.T to O.C. Namti P.S. by R.S.I. to return the case in F.R. as the suggestion into the case of C.I., Nazira had been approved by Addl S.P.(HQ) Sivasagar F.R.No.11/99 dated 3.12.99 of case No.17/99. There were only 5 C.D.s Nos 1 to 5..Detail Report submitted by S.I.Shri Phuleswar Gogoi There is detail Report of S.I Pradip Kumar Dutta. The case is returned in F.R.as true u/s 147/149/302 IPC.but there is no clue. The Final Report No, 11/99 was submitted by O.C. on 3.12.99 and was approved by C.I.Nazira on 6.12.99 and was ultimately accepted on 7.1.2000... ..

On perusal and scrutiny of the prosecution evidence, it is surprising that no two statements agree, to justify acceptance. Depositions of Shri Lalit Ch Dutta and Shri Parama Dutta are based on wicked lies, for which the prosecution case instantly collapses. It appears that After Amrit Bhuyan was killed, the killers concocted the plan to save themselves by means of accusing him posthumously as they thought would save them all, but could not plug the loopholes in the story. On the other hand, the defence case is consistent and mutually corroborative both in evidence and by the inquest and post-mortem reports..

On the basis of the above evidence, the identity of the killers and their accomplices may reasonably be limited to Shri Lalit Ch. Dutta, Shri Parama Dutta, Shri Amulya Dutta, and Shri Deepak Dutta, of Kukurachowa village, and such other Sulfas as may be found to have participated in the killing, and also such of the Sivasagar District Police Administration including the O.C Shri Pradip Kumar Dutta., who excited, helped or

facilitated the commission of the killing, but excluding the then S.P. Shri P.K. Lohia who is no more with us, and those who had nothing to do in the investigation of the case.

It is recorded as fact that Shri Amulya Dutta and Shri Deepak Dutta did not respond to Commission's notice u/s 8B of the Act.

This case deserves to be revived and reinvestigated.

(C) Whether there was any conspiracy in targeting Amrit Bhuyan and the motive behind such killing.

This term is replied in two parts, namely, 1. Conspiracy in targeting, and 2. Motive behind killing.

I. Conspiracy in Targeting the Victim. Conspiracy in the context of the instant inquiry, will mean criminal conspiracy, which is defined in Section 126A of IPC as follows:

“When two or more persons agree to do or cause to be done-

- (1) An illegal Act, or
- (2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

“A person abets the doing of a thing, who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the First Report and the same is referred to... The question whether there was any conspiracy or not in the killing of Shri Amrit Bhuyan has to be decided on the basis of the law and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that Shri Amrit Bhuya was an ULFA. Though the Commission was not told, he may have had incurred some political displeasure of someone or wrath of the army, police or some Sulfas. The persons who participated in the act of actual killing on the fateful night, must have been the same or their agents and accomplices and as such, there

could be no other answer than that there was criminal conspiracy in the killing of Shri Amrit Bhuyan. There is evidence to show that the concerned Sulfas were enjoying protection from the police. There is the evidence of the family members of Shri Amrit Bhuyan being frequently harassed by army, CRPF and police going there in search of Amrit. This may have disabled the police from taking the right actions in this case. That some of the Sulfas were involved in this case is in evidence.. Similar situation was found in cases of several other police sheltering SULFA camps.. Indeed the police- SULFA nexus, as has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties was raised to a high pedestal by some authorities. This means that the SULFA emerged as an Extra-Constitutional authority. In case the concerned Sulfas were such a body of persons and were used by police authorities either as an auxiliary, or as the striking arm, they would also be part of the conspiracy.. We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of the victim, there were number of persons in the concerted act of killing. Then, there was also a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to criminal conspiracy. The manner of planning and execution of the act of killing show that there must also have been some authoritative institutional assurance of safety to the SULFA killers after the act was completed. Therefore, it is held that there was conspiracy of the worst kind, being among the protectors against the victims they were bound to protect under the law, in this case.

II. Motive behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence that Shri Amrit Bhuyan was an ULFA and he was not in favour of surrendering in view of the fact that the SULFAs of Sivasagar had already been killing people, and he did not like to be one of them. The modus operandi of this case is the same as in many other cases under inquiry. Therefore, there could be no doubt that forwarners having been a part of the conspiracy. The then Chief Minister Shri Prafulla Kumar Mahanta published press appeals to the members of ULFA families to persuade their ULFA members to give up path of violence and surrender. The Army, the CRPF and the police accordingly advised the families, and also forewarned that consequences of failure to do so would not be good for the family and persuaded the members of Amrit Bhuyan's family in that line. The fact that there was a request made to the literary organizations and Sahitya Sabhas of the State to persuade the ULFAs to surrender is in evidence elsewhere. A course of conduct by different agencies towards similar persuasuin and the forewarning that in case of failure to effect surrender consequences would not be good for the family of Amrit Bhuyan, and thereafter finally culminating in his killing support such a conclusion beyond reasonable doubt.. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. The way in which, and with which Shri Amrit Bhuyan had been brutally and treacherously killed leaves no doubt that the killers enjoyed complete immunity for their acts of killing. The way in which in this case, as in all other cases under inquiry, the investigations were made to fizzle out and the F.R. (Final Report) was submitted shows that the police has been in collaboration with the killers. All these also prove that the entire scheme was being remote- orchestrated from the top of the department.. Those in helm of the Department must be held accountable and

need be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt. .

Immediate Motive The immediate motive of the killers could be any reward or satisfaction, promotion or better posting emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. without any sanction of law and in blatant violation of the victim's Legal, Constitutional and Human rights. of Amrit Bhuyan. Intention and motive are often used synonymously. The motive was the perpetuation of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty and dangerous propensity. In Criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it. We have to ascertain from the circumstances, anterior, present and posterior to the incident of killing, The anterior circumstances were that Shri Amrit Bhuyan was a stubborn ULFA and unwilling to surrender, and therefore, was politically undesirable for the ruling clique through the District police administration which utilised the Sulfa killers.

Deokan Kalita also came to their house and narrated the story in presence of Apurba and his mother Smti Phulamai Bhuyan., all the members of their family and few of their villagers. Shri Deokan Kalita was related to them as one of his cousins married a daughter of Shri Deokan Kalita who was an agriculturist. The news of the killing was first given to their family by Shri Rajen Barua of Tingiripam Kohar Gaon in presence of one Simamta Phukan of , a SULFA. the distance between their house and that of Deokan Kalita would be about 11 kms; and that between their house and the Kukurachowa Gaon would be about 11/12 kms. .

This case deserves to be revived and re-investigated.

(D) Pinpointing responsibility on persons involved directly or indirectly in the killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides, what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The Best Evidence Rule. "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that "the best evidence must be given of which the nature of the case permits." has often been regarded as expressing the

fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, "In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court".

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this series of cases under inquiry is, therefore, relevant and admissible,

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e., when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7.2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators." The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated (in another case) about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence in such cases..

The following common characteristics of the earlier cases are found in this reverse case filed by the killers against the killed ULFA, while answering its terms of reference so as to justify a finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs and their families and relatives, namely, :

1. That this killing involved an ULFA family, being that of ULFA Shri Amrit Bhuyan.
2. Unlike in other cases, this killing of Amrit Bhuyan was committed in mid-day light.
3. The killers did so within their enclosures to avoid being seen by outsiders;
4. The weapon used was an axe and other heavy weapons as the injuries indicated.
5. The weapons were not seized as the killers lodged false ejahars against the killed ULFA and the Sivasagar District police administration collaborated by false investigation of the cases, abusing the process of the Court..
6. The vehicle used was a Vespa scooter of one of the killers and was alleged to have been snatched away by the deceased ULFA when alive...
7. There was no police patrolling in the crime house at the time of the killing.
8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an Extra-Constitutional authority and used as the executioners.
9. There was general resentment and decry against the Unified Command Structure/ then Chief Minister..
10. There was connivance of SULFA; and omission to make any SULFA an accused despite clues..
11. The investigation was designed to prove the false case of the killers by posthumous placing of incriminating materials claiming those to have been found with him..
12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
13. No condolence message was sent from the Govt. of Assam to the victim family.
14. No ex-gratia/compensatory payment was made by the then Govt. of Assam.
15. In this case death penalty was imposed for "status offences," of being ULFA.
16. In this case of Amrit Bhuyan there was remote orchestration and Ulfocide.

Ulfocide, death penalty having been imposed on the victims for "status offences," of being members of ULFA or ULFA related families.

16. That from evidence of this case, as in all other cases, "remote orchestration" of Ulfocide" is deducible. These common characteristics, along with evidence, prove.

beyond reasonable doubt, remote orchestration of "Ulfocide" from "Home Ministry" , through Police-SULFA nexus, using the latter as executioners..

On the basis of evidence and rejection of the false case, the responsibility of being directly or indirectly involved in the killing ULFA Amrit Bhuyan may reasonably be pinpointed on Shri Lalit Ch Dutta, Shri Parama Dutta, Shri Amulya Dutta, Shri Deepak Dutta and such Sulfas as may be found to have been involved in the killing, and on the then O.C. of Namti P.S. Shri Pradip Kumar Dutta and such

officers of then Sivasagar Police Administration, other than the S.P. who is no more, as was connected with the investigation of the case, and such State Police authority that remote-orchestrated the case.

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed for restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student

organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

The Army Districts. In para 15 we discussed the structure and functioning of the Unified Command Structure. In course of the Commission's hearing sessions in the Upper Assam district of Sibsagar it was learnt that the Upper Assam districts of Tinsukia, Dibrugarh, Dhemaji, North Lakhimpur and Sibsagar have been declared as Army districts and that, as a result, Army has been operating in those districts. In so far as the declaration is concerned, this Commission has nothing to do. As the Commission has to enquire into some criminal cases of some of those Upper Assam districts, the Commission has to see whether this declaration had any impact on those cases. The Commission proceeds on the basis that during the period from 1998 to 2001 also similar declaration could have been there in those districts, and the Unified Command Structure and the Armed Forces Special Powers Act were necessarily in operation in those districts. If that was so, what were the functions and powers of the Army thereunder would be relevant in the context of prevention of such killings. We have already discussed this, including the leading case, in para 15.

The Armed Forces (Assam and Manipur) Special Powers Act, 1958 was amended by the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972; and it is now The Armed Forces in the State of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram Special Powers Act, and it is extended to all these North Eastern States. By section 4 of the Amendment Act 1972, section 3 of the principal Act stands substituted, namely,

"3. If in relation to any State or Union Territory to which this Act extends, the Government of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area." The Armed Forces Special Powers Act does not enable the Armed forces to supplant or act as substitute for civil power after a declaration has been made under section 3 of the Act. The power conferred under Clause (a) of section 4 of the Act can be exercised only where any person is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or firearms; ammunitions or explosive substances. In other words, the said power is conditional upon the existence of a prohibitory order issued under a law, e.g. under the Cr.P.C. or the Arms Act, 1959. Such prohibitory orders can be issued only by the civil authorities of the State. In the absence of such a prohibitory order, the power conferred under clause (a) of section 4 cannot be exercised. Similarly, under section 5 of the Act, there is a requirement that any person who is arrested and taken into custody exercise of the power conferred by the clause (c) of section 4 of the Act shall be made over to the Officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

Maintenance of public order involves cognizance of offences, search, seizure and arrests followed by registration of reports of offences (F.I.R.s), investigation, prosecution, trial, and in the event of conviction execution of sentences. The power conferred under the Act only provide for cognition of offence, search, seizure and arrest and destruction of arms dumps and shelters and structures used in training camps or as

hide-outs for armed gangs. The other functions have to be attended to by the criminal justice machinery. Thus, the functions in aid of civil power have been ruled by law and not by discretion. The deployment of the Armed forces of the Union in a State does not in any way deprive the people of the disturbed area of the State of their fundamental rights to life and liberty. Any violation of such rights under such provisions would not countenance violation of Constitutional and human rights of the people by the Forces deployed in aid of civil power, nor would it prevent fake encounters from being murders, or a crime from being a crime, punishable under the law.

Throughout evidence the official witnesses say that they kill the boys in self defence. The idea varies, and some seem to be of the view that Ulfas are to be shot at sight. Fake encounters are often reported in news papers. Almost always some obsolete weapons/ammunitions and/or some Ulfa related papers are put near the dead bodies, obviously for post mortem justification of the killings. This will not stand on the way of the spade being called a spade.

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of

the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner..While no training course will be appropriate, considering their exalted position and prestige, periodical periodical seminars and discussions at government levels may refresh their knowledge.and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc.Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society to the extent he is capable of..There is no doubt that our Police Force is one of the best in the country.To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate peotection, but using their services as "guides, "spotters". trouble-shooters and cellaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether.However, the Insolvency principle is not applicable to criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective resplonsibility may apply to all those who were forming Govrntment in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the citizens was effected, and by those whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favoue in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex- gracia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the

Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning youth of the family has been put to death under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial livelihood replenishment of the survivors of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, Assam, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to Smti Phulamai Bhuyan, mother of the victim Shri Amrit Bhuyan, for the benefit of the family, a sum of Rs 5,00,000/- (Rupees five lakh only) forthwith. More than seven years have already elapsed and it brooks no further delay,

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SHRI HEMEN CH. KALITA KILLING CASE

Paltan Bazar P.S.CASE No.307/99

Date of occurrence 24.8.99

By this Commission's order dated, 12. 3. 2007 by virtue of the authority conferred on it by the Government of Assam Notification .No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification .No.PLA 331/2005/1 dated 22.8.2995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference, and any other related and relevant matters with recommendations, if any, namely:

- “(a) Circumstances , in each case, leading to the killing of its victim(s).
- (b) Identity of the killer(s) and accomplice(s), if any.
- (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).

- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
- (e) To make recommendations to prevent recurrence of such killing(s)
- (f) Any other matter related to or relevant to the purpose of this inquiry;"

"(A) Circumstances leading to the killing of Shri Hemen Ch. Kalita..

On 25.8.99 Shri Lohit Ch. Kalita, father of Shri Hemen Ch. Kalita, of Birubari, Guwahati submitted an FIR at the Paltan Bazar P.S. to the effect that on the previous night (of 24.8.99) at about 12 midnight one group of five youths ordered him to open the door of his house, and later breaking the door open, entered into his house and first wanted his eldest son Shri Hemen Kalita and, in the pretext of having something to talk about, forcibly took him away saying that any phone call will mean trouble to them. The boy had "asthmatic trouble" He prayed that his innocent son be rescued unharmed from the Organisation and restored to him. Since then the boy has not been restored and has not been heard of by those who would naturally have heard of him had he been alive..

(B) The identity of the killers, and their accomplices, if any

On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who being directly struck at by the criminal prohibition, offends against it with the necessary mens rea or negligence. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous. We discussed the meaning of "secret". In para 7 of the Introductory Part 1. Identification of the killers has to proceed on the basis of investigation and evidence. wherefrom, in this case, two shortcomings appear from records, namely, that only routine investigation was done; modern methods were not used; police dogs were not engaged. to sniff out the culprits; and foot or finger prints were not taken. Investigation was perfunctory, as important evidence were not taken promptly or not at all

N.W Shri P.K. Khanikar, the then Inspector/O.C, Paltan Bazaar P.S. received the Ejahar on 24.8.99 at about 10.45 A.M. from the complainant Shri Lohit Ch. Kalita who was accompanied by the I/C. Birubari petrol post, S.I shri D Sinha. It was to the effect that at about 12 midnight 5 unknown armed miscreants came to his house and wanted his eldest son Shri Hemen Ch. Kalita; and as the inmates did not open the door, they entered the house through the half constructed backside of the house and wanted their eldest son Shri Hemen Ch, Kalita with whom, they said, they had something to talk about. When Hemen came out of his room, he was taken out of the room and to their vehicle parked a little away from their gate, and drove away, and he had not been seen since then. Immediately making the G.D entry and registering the Paltanbazar P.S.case No 307/99, the O.C., with the I/C of Birubari Patrol post, arriving their house, asked Lohit Kalita as to what he thought about the miscreants, he (Lohit Kalita) reportedly mentioned the "Sangathan" saying "they appeared to be neither policemen, nor SULFAs", and so he took them to be ULFAs. Now to the extent he said "not to be policemen," when it is said by the O.C. as witness, it would be self- exculpatory to him, and hence cannot be acted upon.. Regarding "nor SULFAs", in his deposition Shri Lohit Kalita said that by "Sangathan" he meant only SULFAs This will

need interpretation. Lohit Kalita, as has been said by the witness, was a religious and cultural co-worker with the witness, and their relationship was very very cordial, and the O.C. left no stone unturned in trying to find Hemen Ch. Kalita out, but could not.. He denied that he told the father Lohit Kalita that his son was at Jhalukbari or at any other place, that was only a misinterpretation of what he said to console the broken-hearted father.

Asked about the question by another intruding boy to the boy who took money and ornaments from the almirah he searched, namely, whether he was sent to take the money and ornaments or the man, Shri Khanikar asserted that the miscreants were definitely not sent by him, but he observed that it could be by any other branch of police, say, S.B.I.. The significance of the observation was that the Police could not deny that the boys were never sent by police. This could also probabalise the three Maruti Gypsies brought by the miscreants being nothing else than police. Gypsies.

Shri Lohit Ch Kalita, father of Hemen Ch Kalita deposed that on 24.8.99 night at about 1 A.M. when his son Hemen was about to go to bed, someone called him from outside and he (Lohit) opened the door and saw a group of armed youths and in fear closed the door. Then the boys came to the backside of his house and breaking the bamboo fence entered the house, and one said that they would like to talk to Hemen for 2 hours. They were then taken to the front drawing room where they talked for about 5 minutes when one of the boys came to the inside room and demanded the key of the almirah, and with the key he opened and searched it and found some money and his wife's gold ornaments which he took in his pocket. At this another boy came and protested saying that he had been doing that thrice, and asked him whether he was sent to take the man or the money? The boys then came to the drawing room and closed its inner door. Then Lohit Kalita came by the backside door to the drawing room and found it open and none there, but he saw three armed youths standing at the gate and prevented him from raising alarm, and coming back they snapped the telephone connection and left. According to him, all the youths were Assamese speaking and Assamese and tribal looking. Though he did not see any vehicle then, later he learnt that

The DIG(CWR) in his letter dated 28.9.99 to the Addl. S.P. City expressing surprise why inspite of surrender of number of members of the violent group it should be difficult to apprehend the culprits, the letter being endorsed by the witness to the I.O. Shri Dwijamoni Singh, and the latter examined a number of recent surrenderees, but in vain. So also two ladies who were running the P.C.O, before it was purchased by Shri Lohit Ch. Kalita were suspected to have had something to do with the killing of ULFA Action Commander Shri Babul Ingti, who rented a room of one of the employees of the PCO. The hypothesis was pursued, but to no effect. as the two ladies could not be found out and ultimately no clue could be found to the kidnapping..However, the O.C. could not entirely rule out such a possibility The Paltanbazar Police station, according to the witness, was supplied by Government only a Papa vehicle which also was in a dilapidated condition and he did not know whether it could be called a Maruti Gypsy vehicle. He said that he was not supplied with any dependable vehicle, and he used his personal Maruti Van on most occasions. No vehicle was provided to the Birubari outpost. As O.C. he could not requisition any private vehicle as requisition was always done by Police Reserve. The City patrolling was not co-ordinated with Police Patrolling. and consequently, encouraged the ULFAs so as to result in kidnapping of Hemen Kalita.

Shri Khanikar said that during his time in Paltan Bazar P.S. there was only one operation involving Shri Babul Ingti and this kidnapping, but he knew that the Narakasur Hillside was terrorist infested and number of raids had to be undertaken in that area; and that raid was not the same thing as operation which was, according to him, in the hands of another authority which planned and designed it and police was only asked to be in readiness. This reminds the Commission of one officer designated as I.G.P.(Operations) who said, and the Commission took it with a pinch of salt, that his function was only deployment of forces under the Unified Command Structure. Normally, the O.C. said, when that authority carried on operations the police station was to be informed, but he did not know whether such operations were going on without his knowledge. He had been O.C. in Paltan Bazar P.S. since about a year before the incident and till 2001. a fluctuating number of ULFAs used the hillside for their shelter for which raids had to be conducted there. He distinctly remembered that Lohit Ch Kalita mentioned to him the "Sangathan" meant ULFA and did not know how he shifted to SULFA and why in the FIR he did not mention "Sangathan". The place of occurrence was accessible from three sides, namely, T.B. Hospital side, the Rupnagar AGCC side and Guwahati Medical College Bhangagarh road side. The Paltambazar P.S. petrol party used to cover the Birubari area as Birubari outpost had no vehicle and staff for patrolling, but the O.C. said that they had no patrolling duty there that night. There was a source report that Shri Hemen Ch. Kalita was kept and tortured in the Usha Court apartments at Zoo Road, and the O.C. with the I.O. visited the Usha Court and verified the information, but found no proof there, but he did not enquire who were the occupants thereof. If one of the miscreants asked another money taking miscreant whether he was sent to take the man or the money, the O.C. would interpret it as "either some of our department people may have sent them or the leaders of ULFA could have sent them". SULFA was omitted. The case was supervised by the O.C. and his superiors, namely, the D.S.P., the Addl S.P. and S.P. of the City. The O.C. sent a progress report after 16.9.99 which was rejected by the DIG and he was transferred..

P.W. 5 Shri Prasanta Kumar Dutta (P.K.Dutta, for short) Addl S.P. (City), received information about the case only in the afternoon of 25. 8.99. Apprised of the case, he was surprised that the first information was lodged after 10/11 hours of the kidnapping which was greatly disadvantageous for investigation of the case. By that time the father of the boy Shri Lohit Ch. Kalita and some neighbours were already examined by the In-Charge of Birubafi Patrol Post Shri Debendra Singh. Even so, he instructed the D.S.P., Panbazar Division to proceed to the place of occurrence and take necessary steps. and to alert all police stations and outposts of the State with the particulars of the case. On 27.8.99 he visited the P.O. and met Shri Lohit Kalita who told him that there were 5/6 armed miscreants who entered their house and that Jeep was parked a little away from his gate. They threatened him with dire consequences if he informed police. and he was nervous and did not inform police then. Lohit Kalita could not say whya was the kidnapping, except mentioning a "sangathan". but could not recognise any of the assailants. He then came to Paltanbazar P.S. and took stock of the position of the case and the Inspector/O.C. said that he could not detect the kidnappers and could not recover the boy despite his best efforts and that the I.O. also tried his utmost. Yr O.C. mentioned the case of the P.C.O in name of Lohit Kalita which was seized as some link with the ULFA was suspected. The then Addl S.P.(City) submitted a detail Progress

Report to the D.I.G. C, W, R, and the I.O. Shri B. Das submitted F.R. No. 8 dt. 20.1.2002. The case was treated as S.. He was transferred out in July 2001 During c-cross-examination Shri P.K. Dutta said that at his house Kohit Ch, Kalita, he found to have been a confused prson as sometimes he would say SULFA, sometimes Sangathan, sometimes he would say aJeep, sometimes a Maruti Gypsy, sometimes he would say he was confused. The case was supervised by Shri Dbn Deka, D.S.P. and the Inspctor/O/C. Shri Lohit Ch. Kalita, the Addl S.P. said, did not fully co-oprate in investigation of the case as he was not giving all required information, Asked to comment on the statement of the O.C. on the statement of one of the kidnappers asking his colleague as to wh ehether he was sent to take the money or the man", the O.C. said that it was devinitely not he, but might be some other Brance, sa, S.B.I." Shri Dutta said that it should not have been so said, as the different branches keep themselves mutually informed..

Shri Biraj Mohan Sarma who was an Hon'ble Minister in the then A.G.P. Govt, and who was issued notice under s. 8B of the Act, had to to be under treatment and to undergo some surgical operation outside Assam and, on his application, was allowed time up to 20.7.2997. However, till then he was still unable to attend, and the Commission hearings came to an end on that date. The aforesaid notice was issued to him as there were some statements alleging that Shri Biraj Moohan Sarma, after few says of the incidentrn, stated in a public meeting that Hemen Kalita was alive and would be recovered. Shri Sarma was allowed time for treatment considering that one's own life is the most precious God-given boon to himself.

This is one of the twilight zone cases to have been taken up by the Commission. The first hyoithesis tested was that of the ULFA. The premises are the mplird connection with the Lohit Kalita's P.S.O. and the two associated ladies, Manibala and Mani Bow, with the report that some ULFA connection, as also the onservation of the D.I.G. (CWR) that after surrender of so many hillside ULFAs the detection in his case should not have been difficult, the then recent killing of Shri Babul Ingti in rented house of a lady, considered along with the use of the word "Sangathan" by Lohit Ch. Kalita did suggest it. However, the later statement of Lohit Kalita that by "Sangathan" he meant SULFA, the description of Assarnese speaking,, Assamese and tribal looking 5/6 boys, the mention of three Maruti Gypsies, the modus operandii of the kidnapping, and the one of the kidnappers taking money and ornaments from th almirah and another questioning him that whether he was sent to take th man or the money, and the statement of the O.C., Paltan Bazar P.S. that it could be any other branch of police, say, the S.B.I. and not his P.S, probabilised the State police-Sulfa nexus; and furthermore, Shri Hemen Ch. Kalita's business entrepreneurship in running a tent house, and his father's P.C.O. and the fact of retirement of his father from service and rhumers of his having somemoney associated with his retirement, considered with the then contemporary coercive collection of funds by State instrumentalities round about that pr-election years, and the post-incident facts that the investigation in the case, as in all other such cases under inquiry, ending in the case being returned in F.R., add weight to the State police-Sulpha nexus hypothess. God alone knew and saw what was the truth. On reasonable comparative analysis of the evidence and hypothesis, the Commission is inclined to accept the Police-Sulfaa nexus hypithesis in this case. Accordingly, on the basis of the above evidence, the identity of the kidnappers/ killers and their accomplices, if any, may reasonably be limited to the Police-

Sulfa nexus that came to the house of Shri Lohit Ch. Kalita, and took away money and ornaments of Mrs. Lohit Kalita, as also Shri Hemen Kalita, being sent by some branch of police, "say S.B.P.", and the officers and men of the Paltanbazar P.S. including the I/C Birubari patrol post, and the O.C of the P.S., as also such officers of the Guwahati City Police Administration, as were connected with the investigation of the incident of the night of 24.8.99, and such officers of the State Police hierarchy as may be proved to have excited, helped or facilitated the Kidnapping/Killing of Shri Hemen Ch. Kalita, and remote-orchestration of the kidnapping/killing of the victim....

This case deserves to be revived and reinvestigated.

(C)Whether there was any conspiracy in targeting Hemen Kalita and the motive behind such killing.

This term is replied in Parts.1.Conspiracy in targeting, 2..Motive behind the killing.

I. Conspiracy in Targeting the Victim. Conspiracy.in the context of the instant inquiry, will mean criminal conspiracy which is defined in Section 126A of IPC as follows:-

"When two or more persons agree to do or cause to be done-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

" A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or persons in any conspiracy for the doing of that thing.if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation.-1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures. or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the First Report and the same is referred to...The question whether there was any conspiracy or not in the kidnapping/killing of Hemen Ch Kalita has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators?

It is in evidence that the family members of Hemen Ch. Kalita that the PCO purchased by their family was suspected to have had something to do in ULFA communication and ULFA Action Commander was in a rented house of one of the employees of the P.C.O, and that might have antagonised the SULFAs and that might have culminated in the taking Hemen Kalita away. The persons who participated in the act of actual kidnapping on the fateful night, must have been the same or their agents and accomplices and as such, there could be no other answer than that there was criminal conspiracy in the kidnapping/killing of Shri Hemen Ch. Kalita, a promising entrepreneur with some earning.

From the middle of the year 1999, there appeared to have been a coercive fund collection drive from the entrepreneur Sulfas as would appear from a number of cases during that period. There is evidence to show that the SULFAs were enjoying protection from the then AGP Government asking selected rising businessmen to contribute specified amounts of money, and in several cases those who did not or could not comply, were kidnapped and nobody knows what happened to those persons who have not been heard of by those who would naturally have heard of them had they been alive.. There have been evidence in similar cases that the police-Sulfa combination was used to collect such funds may have been sought to be collected through Police-Sulfa teams as has been seen in some cases of this period. disabled the police from taking the right action against the SULFA in this case. Similar situation was found in case of Nalbari police sheltering SULFAs. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an Extra-Constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. . We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the kidnapping/killing of Hemen Kalita, there were 5/6 persons in the act of killing. But there was a course of conduct involving the deciders of the course of action culminating in the kidnapping/killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of kidnapping/killing show that there must also have been some authoritative institutional assurance of safety to the killers after the act was completed. Therefore, it is held that there was conspiracy of the worst kind, being among the protectors against the victims they were bound to protect under the law, in this case.

II. Motive behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of P.W 1 Shri Lohit Ch Kalita that the O.C. mentioned that Hemen was kept somewhere at Jalukbari side and would be back soon. Shri Biraj Sarma, then a Minister in Prafulla Kumar Mahanta's cabinet, said in a meeting that Hemen was somewhere in Sivasagar side. These expressions at last indicated their information that the boy was alive for some time after kidnapping and the expressions were well meant, though later the boy was not restored. These statements were not challenged in cross-examination. Therefore, there was no doubt that forewarners were in the conspiracy.

It was also evident from some cases that from the second half of 1999 there had been some sort of a coercive fund collection drive through the State instrumentalities including Sulfas. A course of conduct by different agencies towards similar coercive collections and that in case of failure to meet the demands consequences would not be good for the family ,

and thereafter finally culminating in his kidnapping/killing support such a conclusion beyond reasonable doubt. Some of the contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every citizen to freedom of thought and belief, freedom of association, profession and vocation the money earners need be pressurized to s who failed to meet the demands be mentally tortured and reign of terror let loose and when even then they failed, they should be secretly kidnapped/killed? The way in which, and with which Hemen Kalita has been kidnapped/killed leaves no doubt that the killers enjoyed complete immunity for their acts of killing. The way in which in this case, as in all other cases under inquiry, the investigations were made to fizzle out and the F.R. (Final Reports) were submitted show that the police has been in collaboration with the kidnappers/killers. All these also prove that the entire scheme was being remote-orchestrated from the top of the department. Those in helm of the Departments may be held accountable and need be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt. .

II, Motive. The immediate motive of the kidnapper/killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. The member of the Lohit Kalita family, a bright young man with visible entrepreneurship trying to establish himself in life has been brutally kidnapped, for no fault of his, and only for his failing to meet the demand. The kidnappers said they wanted to talk to Hemen for 2 hours. and they searched for money, and were sent by someone to fetch him. Thus the family of Lohit Kalita was, penalised without any sanction of law and in blatant violation of the victim's Legal, Constitutional and Human rights. Intention and motive are often used synonymously. The motive was the perpetuation of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty and dangerous propensity. In Criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the kidnapping/killing will mean that for which the killer has committed the killing, and without which he would not have done it.

(D) Pinpointing responsibility on persons involved directly or indirectly in the killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The Best Evidence Rule "Phipson on Evidence," 9th ed. P. 51 under caption The Best Evidence Rule. Strict Proof" Says: "The maxim that "the best evidence must be given of which the nature of the case permits." has often been regarded as expressing the greimes Roman Normalat fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, "In the ,present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the corpus delicti may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court"

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this group of seven cases is therefore is relevant and admissible,

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction said::

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas ; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymrnous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain of existence of such a fact etc."

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has

stated about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of the earlier cases are found in this case while answering its terms of reference so as to justify a finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs and their families and relatives, on their basis, namely and/or coercive collection of funds from those who could be expected of doing so. :

1. That this killing involved a family, the P.C.O. of which had some evidence of ULFA communication and capable of contributing funds.
2. As in other cases, this kidnapping/killing, of Hemen Kalita, was committed in the midnight and the telephone connection was snapped to allow the assailants to escape freely.
3. The assailants spoke in Assamese, had Assamese and tribal looks, could be identified.
4. There was no mention of firearms.
5. There was nothing for forensic examination.
6. The vehicles used were described differently by Lohit Lalita, sometimes as Jeeps and later as Maruti Gypsies, and were parked about a furlong away from their gate.
7. There were police patrolling in the crime area prior to, but not during the kidnapping..
8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an Extra-Constitutional authority.
9. There was decay against the Unified Command Structure/ Chief Minister.
10. There was connivance of SULFA; and omission to make any SULFA an accused.
11. The investigation did not commensurate with the seriousness of the crime perpetrated..
12. That modern scientific methods of investigation, finger/foot prints, were never used.
13. No condolence message was sent from the Govt. of Assam to the victim family.
14. No ex-gratia/compensatory payment was made by the Govt. of Assam in this case
15. In this case fatal penalty was imposed for "status offences," on Hemen Kalita for being a promising entrepreneur and earning for supplementing family income.
16. That from evidence of this case, as in all other cases, "remote orchestration" of kidnapping/killing is deducible. These common characteristics, along with evidence, prove beyond reasonable doubt, remote orchestration "from Home Ministry", through police-Sulfa nexus using some SULFAs as the striking arms or executioners. The authority must be held liable and be dealt with according to law.

On the basis of above evidence the responsibility of directly or indirectly being involved in the kidnapping may reasonably pinpointed on the Police-Sulfa nexus that came to the house of Shri Lohit Ch. Kalita, and took away money and ornaments of

Mrs Lohit Ch Kalita at the night of 24.8.99, and the officers of the Paltanbazaar P.S. and the I/C of Birubari Petrol Post connected with the investigation of the case, and such of the Guwahati City Police hierarchy that may be proved to have excited, helped or facilitated the Kidnapping/Killing of Shri Hemen, Ch. Kalita and the authority. that remote-orchestrated the kidnapping/killing.

(E) Recommendations to prevent recurrence of such kidnappings/killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure, which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. The same is the case with the holding of the National Games with thumping success. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed for restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy... Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

The Army Districts. In para 15 we discussed the structure and functioning of the Unified Command Structure. In course of the Commission's hearing sessions in the Upper Assam district of Sibsagar it was learnt that the Upper Assam districts of Tinsukia, Dibrugarh, Dhemaji, North Lakhimpur and Sivasagar have been declared as Army districts and that, as a result, Army has been operating in those districts. In so far as the declaration is concerned, this Commission has nothing to do. As the Commission has to enquire into some criminal cases of some of those Upper Assam districts, the Commission has to see whether this declaration had any impact on those cases. The Commission proceeds on the basis that during the period from 1998 to 2001 also similar declaration could have been there in those districts, and the Unified Command Structure and the Armed Forces Special Powers Act were necessarily in operation in those districts. If that was so, what were the functions and powers of the Army thereunder would be relevant in the context of prevention of such killings. We have already discussed this, including the leading case, in para 15. The Armed Forces (Assam and Manipur) Special Powers Act, 1958 was amended by the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972; and it is now The Armed Forces in the State of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram Special Powers Act, and it is extended to all these North Eastern States. By section 4 of the Amendment Act 1972, section 3 of the principal Act stands substituted, namely,

"3. If in relation to any State or Union Territory to which this Act extends, the Government of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area."

The Armed Forces Special Powers Act does not enable the Armed forces to supplant or act as substitute for civil power after a declaration has been made under section 3 of the Act. The power conferred under Clause (a) of section 4 of the Act can be exercised only where any person is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or firearms; ammunitions or explosive substances. In other words, the said power is conditional upon the existence of a prohibitory order issued under a law, e.g. under the Cr.P.C. or the Arms Act, 1959. Such prohibitory orders can be issued only by the civil authorities of the State. In the absence of such a prohibitory order, the power conferred under clause (a) of section 4 cannot be exercised. Similarly, under section 5 of the Act, there is a requirement that any person who is arrested and taken into custody exercise of the power conferred by the clause (c) of section 4 of the Act shall be made over to the Officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

Maintenance of public order involves cognizance of offences, search, seizure and arrests followed by registration of reports of offences (F.I.R.s), investigation, prosecution, trial, and in the event of conviction execution of sentences. The power conferred under the Act only provide for cognition of offence, search, seizure and arrest and destruction of arms dumps and shelters and structures used in training camps or as hide-outs for armed

gangs. The other functions have to be attended to by the criminal justice machinery. Thus, the functions in aid of civil power have been ruled by law and not by discretion. The deployment of the Armed forces of the Union in a State does not in any way deprive the people of the disturbed area of the State of their fundamental rights to life and liberty. Any violation of such rights under such provisions would not countenance violation of Constitutional and human rights of the people by the Forces deployed in aid of civil power, nor would it prevent fake encounters from being murders, or a crime from being a crime, punishable under the law.

Throughout evidence the official witnesses say that they kill the boys in self defence. The idea varies, and some seem to be of the view that Ulfas are to be shot at sight. Fake encounters are often reported in news papers. Almost always some obsolete weapons/ammunitions and/or some Ulfa related papers are put near the dead bodies obviously for post mortem justification of the killings. This will not stand on the way of the spade being called a spade...

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail* and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society needs to be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms,

non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner. While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea, their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, but using their services as "guides, "spotters", trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the Insolvency principle is not applicable to criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher level authorities shall be held liable and be subjected to proper punishments. So far as political and Minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the citizens was effected, and by those whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

(F) Any other matter related or relevant to the inquiry

Under this term the Commission would like to deal with the question of compensation, *ex gratia*, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel

that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning patriarch of the family, his wife and son have been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, Assam and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to Shri Lohit Ch. Kslita, father of the victim, for the benefit of the family, a sum of Rs5,00,000 (Rupees five lakh only) forthwith. More than six years have already elapsed and it brooks no further delay..

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**SAYED ABDUL MUNIN
AND MD. ABIDUR RAHMAN KIDNAPPING CASE
Teok P.S.Case No. 30/2000
D.O. 25.3.2000**

By the Commission's order dated 1.9.2006, on application dated 24.8.2006 submitted by Shri Saidul Hussain, General Secretary, Asom Jatiatabadi Yuba Chatra Parishad, Kakajan Regional Committee, this case was taken up for inquiry in the interest of justice, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No..PLA 331/2005/1 dated 22.8.2005, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry, with notice to the State Government.. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference, and any other related and relevant matters with recommendations, if any, namely:

- “(a) Circumstances, in each case, leading to the killing of its victim(s).
- (b) Identity of the killer(s) and accomplice(s), if any.
- (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
- (e) To make recommendations to prevent recurrence of such killing(s)
- (f) Any other matter related to or relevant to the purpose of this inquiry;”

(A) Circumstances leading to the killing of Sayed Abdul Munin and Md, Abidur Rahman

It is to be noted that this case both the victims were reported to have been kidnapped, but later from evicence it transpired that they might have been killed, and nothing has since been beard of them by their relatives who would have naturally heard of them, during the last seven years, had they been still alive. As in none of the cases under inquiry any one has been seen returning alive, these two victims also are not likely to return alive. Accordingly, the Commission considers it reasonable to proceed on that basis.

(B) The identity of the killers, and their accomplices, if any

It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. The killings of Sayed Abdul Munin and Md. Abidur Rahman were secret not only as to time of killing, but also as to the identity of the killers and their accomplices, if any.. We discussed the meaning of "secret". In para 7 of the Introductory Part 1. Identification of the killers has to proceed on the basis of investigation and evidence on record.. What was stated by Sayeda Sabila Begum about the boys coming with Shri Paban Lahan will be relevant for this purpose. It was deposed by Sayeda Sabila Begum, P.W. 2 in Assamese.

"Ei khinite aru eta katha kaba khuju Mur manuhjanak niyar keidin man agat amar gharat bhabuki diboloi keijanman lora ahisil. Lora keijane manuhjanar agat kiba kibi katha koisile. Eitu katha moi ajiloike kaku kua nai, anki gharar manuhaku kua nai Sei larabilakar majot moi ajanak sini paisilu. Tenur nam Paban Lahan of village Kakajan Arandhara Gaon. Paban Lahan (on the day he came to our house) said: "Tumi tumar lora shuali keita loi saharar gharar phale juagoi amar bhaitidar lagat katha ase. Mur swamieu muk jabaloi kale, aru moi galugoi Ki katha patile moi nejanu kintu alap parar pashat moi ubhati ahi pas phalar para mane mane sumi asilu." Bhaitida apunak katha khini kalu. Imanate rakhilu Apunar patni aru lora shuali ase sihatar katha bhabiba. saridin apunak samay dilu, apuni bhabi chak. Eibuli koi sihat gusi gole. Moi mur swamik bahut baar sudhisilu hihate ki kale. Teu muk eku najanale, anayeu teu kom katha kay moi sei karane besi nusudhilu Pishe tenur para moi gam paisilu je Pabanar lagat aha daltut dujan larar nam asil Baba aru Kalita. Kalitar ghar Rangdoit. Swamiye aru eku nakale. Sei dina thik saridin pur huar lage lage amar gharat ghatamatu ghate."

"Here I would like to say something, which I have not disclosed even to family members. A few days before the kidnapping of my husband some boys came to our house to threaten us, The boys spoke something to my husband. This matter I have not spoken to anyone, not even to my family men. Among those boys, I recognised one boy, his name was Paban Lahan of Kakajan Arondhara Gaon.. That day, Paban Lahan said to me "tumi tumar lora suali keita loi saharar Gharar phale juagoi. Amar Bhaitidar lagat katha ase". You with your children go to your father's house in the town. We have something to talk with your husband Bhaitida. My husband also asked me to go and I went there. I did not know what they talked, but I shortly returned.. Thereafter, from the back side I heard "Bhaitida apunak Katha khini kalu. Imanote rakhilu. Apunar patni aru Lora shuali ase, sihatar katha Bhabibor saridin apunak samay dilu. Apuni bhabi chak" Bhaitida we have spoken the matter to you. We stop here. You have your wife and children. To think about them, you are given four days time. You think over it. Saying this they left. I asked my husband many times what they said. He did

not let me know. Even otherwise he used to talk less. So I did not pester him. Afterwards I could know that among those who came with Paban Lahan the names of two of them were Baba and Kalita. Kalita's house was at Rangdoi. My husband did not tell anything more."

Just after four days therefrom, on the night of 25.3.2000, herself, her children and husband, then suffering from Lumber pain and unable to walk erect, were sleeping in their Kakajan Arandhara Gaon house, they first heard crasing sound of their gate and later knocks at their door, and asked them to open the door, and switching the varendah light she saw few persons, like army, in military dress, arms in hand, who ordered them to open the door, and when she and her husband came out, they were made to sit on the same chair, being afraid that they might be shot, they fell at their feet, but they beat them with rifle butts and kept them motionless. Her sister was asked as to what type of people used to frequent their house, she replied that being villagers, relatives alone used to come and that she herself was a relative. One of them asked where was th Godrej key, being told that it was under the pillow he brought it out and himself opned the godrej throwing the clothes helter skelter but did not open the cash box therein, Seeing a carton on the godrej and asked what it was, the witness told the Hindi speakung man that it was an oven, he was interested in seeing it work for preparing a cake, and expressed that he would purchase a brand new oven. the Assamese speaking person explained the things to him There was another person wearing a khaki pant and a shawl who also spoke in Hindi About 10/12 persons entered the bed room, somewere in police dress The policemen held long rifles, the man in shawl was having a pistol and some short weapon, might be A,K, 47 under his shawl. 2/3 army persons who stood outside also came inside the house and inspected all the five rooms of the house.. Those who remained outside the house had black clothes, and those who came inside were covered their heads and faces with black cloths.. They allowed the wife and husband to go to their room and talk if anything thaey had to, and going there the witness gave her husband Rs. 5,000(Rupees five thousand,) which he reluctantly took, and then he was taken away , assuring that he would be brought back next morning. Even so, before leaving Sayed Abdul Munin bade farewell to hiis son saying,"Your Baba is speakug to you for the last time "

From deposition of P.W. 2 Smti Sayeda Sabila Begum, wife of Sayed Abdul Munin, the following may be noted. When Sayeda Sabila switched on the light the assailants from outsideordered them to switch the light off. Coming out they thought that army had come.They asked in Assamese what type of people used to visit their house. The Khaki clad shawl wearing person appeared to have been the key man Shwing interest in the oven indicated that they were not of high standard. The 'policemen' covered their faces with black cloths The betel sewing Assamese speaking man used to render the Assamese answers into Hindi Soon after the vehicles moved Sabila rar her hysband's loud appeal to the pople to save him from being killed. She a;spam army vehicle covered with net, might be Saktiman).

Sabila Begam told the I/C Ladougarh Outpost that she recognised a person from those who came to hr house to take away her hysband when his face cover accidentally dropped, she recognised him to be the constable of Ladoigarh ourpost who used to come to collect the monthly share of income from he husband's scrap business. at this the I/C expressed surprise saying that he was on leave on that date.

Sabila Begum also deposed that one "Latu", a maimed Sulfa resident of Research TinalimRaroia, Jorhat came and requested her to come to Shri Jayanta Hazarika , a Sulfa leader of Sivasagar. who,he said,knew everything about the kidnapping of her husband, but she refused to go as her husband's relatives did not allow her to do so.Sayda Sabila Begum then said that one of her *Mamas* named Abdul Zaffar, nicknamed 'Tulu' was in the SULFA One night, when her mother was also with her, at about 11/12 P.M. they heard knocks at their door and, because of her husband's kidnapping they were not opening the door, the man shouted that he was none else than her Tulu Mama, and opening the door asked him what

brought him that night, he narrated that he was staying with the Sulfa leader Jayanta Hazarika of Sibsagar, who used to sleep only two hours a night, and was to be closely guarded. That night he slept much longer and taking that advantage he (Tulu) somehow escaped and came to her and after asking several persons on way he found out her house. Asked whether he saw her husband, he said, he knew that she was married, but not to whom and where. He was looking at the photograph of her husband constantly for some time without a wink. After Tulu (.Abdul Zaffar) came to my house and looked at the photograph of my husband, I felt as if he knew something about the incident. I asked him whether he knew anything about the incident. He replied that he remembered a conversation which he wanted to tell about. That conversation was: "Jayanta Hazarika asked Jiten Gogoi *"Kakajanar chiker duta ki karili?"* (What have you done with the two preys of Kakojan?) Jiten Gogoi replied *"Chikar duta anisilu. Safa kari dilu"* (The two preys were brought. Finished them) Tulu said he heard this conversation when he was moving near about them. in Jayanta Hazarika's house. After that he saw both Jayanta Hazarika and Jiten Gogoi enjoying themselves by drinking and smoking. It was after Tulu heard the name 'Kakojan' that Tulu thought that it might be Baby's (My family name is Baby) who, he learnt, had been kidnapped from his house (that is, my house) a few days earlier. After hearing that conversation Tulu had come to my house to let me know about it. I was shocked, but still I asked Tulu "Why did they kill my man?" Tulu replied "I do not know why they killed him" Then I asked: "Do you have any proof that he is dead, any clothes, ring or watch? Tulu replied *"Nai aru eku pua nai"*. *Moi tuk kathakhini kaboloi he ahisilu. Tur ghar tu nu kot moi bhalbare najanisilu Ghatanar pasat batori kakatat address tu pai he moi aji tur ghar uliaba parishu. Biswas kar Baby eitu je tur ghar ba iyat je tur ghar ase moi. sasakoi najanu."* Tulu Mamar Katha suni mur ene lagil jen he sei dinakhan ahisilneki. *Moi sei karane sudhilu. Oi Tulu Mama, toi army operationor dina je mur swamik loi goisil lagat ahisili neki? He said "Moi oha nai. biswas kar."* Kintu moi etiaou bhabu je he jen ahisil sei dinakhan Tar pisat moi aru tulu mamak log pua nai, kintu khabar palu je he Polo Clubor ghatanat morile buli. Pishat batoti kakatat moi ei bisaye gam palu".

No, we did not see anything and did not get anything. I came only to tell you these things. I did not know well where was your house. Getting your address in the news paper after the incident, I have been able to find out your house. Believe me Baby, I really did not know that this was your house or that your house was here. Hearing what Tulu Mama said, in my mind question arose whether Tulu Mama came that day? I, therefore, asked: O Tulu Mama, that day in Army operation when my husband was taken away, did you also come with them? He said, "believe me, I did not come". But even now I believe that he came. that day. Thereafter I have not met Tulu Mama, but I received the news that he died in the Polo Club incident. Afterwards in news papers also I learnt about it.

The killing of Sayed Abdul Munin and Md. Abidur Rahman was secret not because of the place of kidnapping/ killing, but because of the identity of the kidnappers/killers and their accomplices, if any. The identity of the killers and their accomplices, if any, has to be on the basis of evidence on record. It appears that the same party kidnapped the two persons one after another.

P.W. 1, Md. Nazir Muhammed, said that on the night of 25.3.2000 when he was sleeping at his Kakajan Arandhara Gaon residence at about 2.45 A.M. about 15/20 persons came to his house, all in Army dress, except one who was covering himself with a shawl inside which he held a short weapon, wearing a white long pant. They knocked at their door, his sons were frightend, and that the moment he opened the door, two army-dressed and one

civil dressed persons covered with a shawl, in appearance looked like Ahom, asked him in broken Hindi, how many people were there in the family, and was told six, he himself, his wife, three sons and a son's friend. Being called by him all appeared before them, then they asked for his youngest son Abidur, who was sleeping in a varendah room, and as soon as he appeared one armyman caught hold of his hand, and pressed the witness inside his house, they tried to bolt the door from outside, but could not, as the bolt was defective, so one pressed the door and others took his son Abidur Rahman to the vehicle near his gate, and the witness ran to see which way it went, and after crossing about a mile the party returned and passed by our gate, and he saw 2 jeeps and one short Army vehicle fast driven away. The witness, then about 5 A.M., bicycled to Ladoigarh Outpost, met the I/C and narrated the story who said that he would do the needful and advised him to come back home. Not knowing where he had gone, his eldest son Md. Mukibur Rahman went to Teok P.S. and met the O.C. who assured to do the needful and advised him to come home. and immediately thereafter, the assailants left taking his son in a jeep, came to the gate and saw 3 {three} vehicles, two jeeps followed by one short sized army vehicle. proceeding westward but covering about a k.m. they stopped and turned towards our house and proceeded eastward, when it was almost dawn. The witness then bicycled to Ladoigarh outpost, narrated the story to the I/C. at about 5 A.M., and the I/C assured that he would do the needful and advised the witness to come back home. In cross-examination the witness said, inter alia, that his house had electricity connection, but at the time of incident there was no current which was restored only after the assailants left. The assailants were seen in army dress, but none had any ranking tokens, they did not call by specific names, he saw arms with everyone, some 3' long (303 rifles), some shorter ones having holes on sides (A.K.47 or Carbines), and some shorter than a foot, (pistols or revolvers) The shawl wearer had shorter than a foot weapon. All were having short hair cut in police style; his impression was that they were army men; the shawl wearer appeared to be a Bihari, Abidur was a student of Kakojan College, but failed in Higher Secondary, and was looking for a job, his elder brother was only 24. Abdul Munin, the other victim was 7/8 years older. After returning, the vehicles went towards east of their house, returned the same way after about 40 minutes. Army or police did not come to his house before the incident; he had no idea as to why his son was taken away like that. Witness knew of 4 army camps, namely, at Lichubari, Jorhat, at Bhalukmora station, at Mariani, and at Joysagar in Sivasagar district. Smti Renupama Rajkhowa was the A.G.P. M.L.A. from their Teok constituency at that time. Two A.G.P. workers took the witness to her at Guwahati Assembly quarter but she was asked to come some other day as she was otherwise busy that day. He never went to her thereafter. A Writ petition was filed in the Hon'ble Gauhati High Court, but he was not aware of its fate. Only on the day he examined himself before this Commission he heard about a meeting having been held at Jorhat on 20.4.2000, and attended by Smti Renupama Rajkhowa and district officials. On 16.8.2002 the learned C.J.M., Jorhat, accepted the F.R. (Final Report) in this case when the witness and his son Md. Mukibur Rahman, the Informant, were present and despite their application to the effect that they could agree to the final order only if either Rs 10,00,000 (Rupees ten lakh) was paid or two suitable Govt. jobs be given to his two living sons..

Appearing in response to notice under section 8B of the Act Shri Kushal Dowari @ Jayana Hazarika, now M.L.A., resident of Piyali Nagar of Sivasagar Town, categorically denied the truth of what was deposed by Sayeda Sabila Begum, alleged to have been said to her by the boy named 'Latu' and the person named "Tulu". He never knew Sayed Abdul Munin, his

widow Sayeda Sabila Begum, and Md. Abidur Rahman of Kakojan Arandhara Gaon. He admitted that he was also known by his "pet name" Shri Jayanta Hazarika. As he did not know Latu at all, there could be no question of his being sent by him to Sayeda Sabila Begum, and Latu saying anything to her, far less what was deposed to have been said by Latu to her. Similarly, as he did not know Tulu at all, there was no question of his stating and guarding him at his Sivasagar residence and Tulu's going to Sayeda Sabila Begum did not arise, and what was alleged to have been said to her by Tulu was not true and not admitted by him and the allegedly reported conversation was not true and was denied by him. He said that he never took drinks and also never smoked in his life; and the said statement of Tulu about his and Jiten Gogoi's enjoying drinks and smoking was not correct and hence denied. He categorically denied the truth of the conversation as to asking Jiten Gogoi about bringing and finishing of the two Kakojan preys. He stated: "Sometimes some persons made use of some other names for their own purposes, if in this case also such things happened I am not aware of that". He added that he has contested and has won the election in the Thowra Assembly constituency with overwhelming support from the electorate, and has since been serving them. In cross-examination he said that partly because of financial weakness of his family and partly because of his disappointment with the action of the then AASU under leadership of Shri Prafulla Kumar Mahanta, he was inclined to join the ULFA in 1985 and there also being disheartened he surrendered in 1992 with 75 others. Asked about implications of sovereignty he replied that at that tender age he could not analyse, and was naturally inclined towards armed struggle. After surrender he worked with some Sulfas, but has security problems, according to him, about 10% of Sulfas were killed by the Ulfas, and the then S.P. Sivasagar advised them to move cautiously. His original village was Khamon at Bokota Mauza and after surrender he shifted to his Piyali Nagar residence in Sivasagar Town. He used to help needy Sulfas who helped him in business. He admitted that sometimes the S.P. and the Army used to show long lists of Ulfas, often with photographs for identification and used to take guidance in detecting Ulfas and hideouts. He was aware of the secret killings during that period and that Sulfas were being implicated in some cases, and said that in his case he protested against it. He knew about the Usha Court and also generally knew Shri Jugal Kishore Mahanta and came there on few occasions. While there was nothing like Sulfa camp at Sivasagar some Sulfas used to reside in the residence of Sulfa Shri Mridul Phukan on the backside of the Sivasagar Jail. He knew Sulfa Jiten Gogoi of Bokakhat and there was a Jiten Gogoi of Sivasagar, who surrendered lately, and he had no connection with him. He knew the place Kakojan, but not the Arondhara village thereof.

Notice under S.8B was issued to Shri Jiten Gogoi of Bokakhat. After some difficulty the notice could be served on him at Dispur, he having been M.L.A. at the time of service. But there was no response in denial from him at all. S.8B notice was also issued to Shri Paban Lahon of Kakojan Arandhara village, as he was recognised by the inmate of Sayed Abdul Munin's house when he, along with some others went there a few days before the incident, and talked to Sayed Abdul Munin, keeping his wife at bay. There was no response in denial from him. As Shri Jayanta Hazarika's name was mentioned as enquiring only about what was done to the kidnapped victims, as he categorically denied the involvement, he has not been identified under this term.

P.W.3. Sayed Jelilur Rahman deposed that he went to the Ladoigarh outpost who told him that the army generally did not undertake operations of their own, but in this case they

did so. He also stated that a Writ petition was filed in the Hon'ble Gauhati High Court, but no details were furnished.

N.W. 3 Shri Punyadhar Bora was the I/C of Ladoigarh outpost of Teok P.S, and the I.O. of the case. On 25.3.2000.at about 7 A.M.he first knew about the case when a brother of Md. AbidurRahman (the kidnapped person), came and gave the information that a group of army men coming in three army vehicles forcibly took away his brother Md. Abidur Rahman and another person, Sayed Abdul Munin, of Arandhara village, just before dawn. He immediately informed the S.P., the Addl S.P.(HQ) Jorhat District, Jorhat and the O.C.,Teok P.S. The addl S.P. having arrived there soon he, with his staff proceeded to the place of occurrence and took stock of the situation, and interrogated some of the villagers assembling there. They repeated the same story as earlier. Thereafter they proceeded to the house of Sayed Abdul Munin, interrogated persons present, including Sayeda Sabila Begum, all repeating the same story.regarding Munin. He made the G.D, entry on receipt of the information, but the FIR was sent to Trok P.S. where the case was registered on 27.3.2000 on receipt of the FIR.from Ladoigarn outpost. The people examined by him described the assailants as army men without mentioning their ranks, badges or decorations and he forgot whether he asked about those specifically. They described the vehicles as army vehicles. Three persons entered the house, one of them in civil dress and one wearing a shawl and had some small arm and two Vs as insignia. One spoke broken Assamese, there was another Assamese speaking person, the others spoke in Hindi. There were some persons inside the parked vehicles.It appeared that they did not know Abidur Rahman(Kidnapped person) and took him away when he identified himself. He said that neither Abidur Rahman nor Sayed Abdul Munin had any bad record at the Ladoigarh outpost. The inmates said that taking away Abudur Rahman they proceeded some distance towards Jorhat and then turned back and came to Sayed Abdul Munin's house and took him also away towards Jorhat.

The inmates of Abdul Munin's house also described the assailants as army men and they spoke in Assamese that their cattle got loose There was at least one person in civil dress.. The I/C said that he heard the name of Munin, but did not know him.However, he knew that Munin was in scrap business of moderate scale of collecting scraps and selling those iat Jorhat.He did not remember whether he came to Sabila Begum and talked to her on 26.3.2000. or whether the O.C. Teok P.S. or SP Jorhat called her to Jorhat sadar P.S.. The S.P. did not take her to Sabila Begum's house..

"Q. Did you visit Sayeda Sabila Begum's house after the incident and wanted to talk to her when she was alone?

A. I used to visit her house with a view to know if there was any new material in the matter of investigation of the case and I talked to her and sometimes I might have taken her aside and take some information from her beyond the hearing of others."

Q. Did you ask her whether she knew any of the assailants?

A. Yes, I asked her, but she said that she was not in a position to identify any.

Q. Do you remember if she told you that at the time of taking her husband out, one of the assailant's black face cover dropped and she could identify the person by face?

A. I do not remember.

Q. Did she tell you that the person whose face mask dropped and she recognised was a constable of Ladoigarh Police outpost?

A. She did not tell me so.

Q. Do you remember whether any of the constables in Ladoigarh O.P. was on leave on the date of the incident?

A. I do not know..

The I/C said that he never visited Sivasagar Town; that he heard the name of one SULFA leader Shri Jayants Hazarika. He knew the research Tinali near Jorhat as he had to come via that Tinali while coming to Nagaon. He did not hear the name of Latu, a Sulfa from Jorhat. He did not examine any Sulfa as there was no instruction from above to do that. He was aware that at that time throughout the State a police-Sulfa nexus was built up and Ulfas, members of their families and relatives were being secretly killed. Attention being drawn to the statement of Rubul Ali that he would be able to identify the army-dressed persons and of Makibur Rahman that he would be able to identify the person who spoke in Assamese if produced before them, and yet he did not arrange any TIP, because there was no instruction from higher authorities, though he admitted that it was his primary responsibility as the I/O. to have done so. Some inmates having said that the assailants included army-men and policemen, he asked his policemen of his outpost whether any of them went there, the reply was said to be in the negative. The I.O. denied the suggestions, namely, that the kidnappers included one constable of Ladoigarh police outpost, as stated by Sayeda Sabila Begum, yet he deliberately did not issue any process to that constable; that Latu having clearly stated to Sayeda Sabila Begum that Shri Jayanta Hazarika of Sivasagar was involved in the kidnapping, and yet he deliberately did not act on that clue and reported the case to be clueless; that the kidnapping was done by the Army-men policemen and the Concerned Sulfas in nexus and therefore, he deliberately allowed the investigation to fizzle out and did not examine any Sulfa in the case; and that the kidnapping was at the instance of the then State Government and being aware of that he deliberately tried to hush up the case. The I.O. did not think that Shri Jiten Gogoi was involved in the kidnapping, but could not rule out the possibility altogether.

N.W. 2. Md. Hussain, O.C. Teok P.S. was informed of the case during morning hours of 25.3.2000 by the I/C. Ladoigarh outpost, after the I/C already visited the place of occurrence. O.C. immediately proceeded to the place of occurrence, visited both the victim's houses and examined villagers assembling thereat, and returned to Teok P.S. in the afternoon. He informed the S.P. Jorhat who asked to proceed cautiously as there was no record of the army operating in the Jorhat district then. The FIR was received by then, and making G.D. Entry he registered the case and entrusted its investigation to the I/C. The interrogated people mentioned only army-men and three army vehicles before him. Sayeda Sabila Begum told him that they had no enmity with anybody and she did not know why her husband was kidnapped. Even if some people stated that they would be able to identify some army-men, if produced before them, it was not possible to bring the unknown army-men for TIP. The police had no plan for operation in Kakojan area at that time. The Unified Command Structure was not in operation there. There were Ulfas and Sulfas in that area. The names of the two kidnapped persons were not there in the ULFA list, though presence of unlisted Ulfas could not be ruled out. The O.C. denied the suggestion that there were directions from higher authorities and the army and policemen acted in collaboration with the Sulfas and so knowingly he allowed the investigation of the case to fizzle out without any clue. The O.C. could not rule out the possibility of sulfas from the eastern Sivasagar and western Golaghat districts to have been involved in the kidnapping case. There was a meeting on 20.4.2000 in Jorhat Circuit House attended by Smti Renupama Rajkhowa, Deputy Speaker, the District administration, the

AASU of Jorhat unit and the A.G.P. which resolved to urge the Chief Minister to institute an inquiry into the kidnapping, but nothing materialised. The Addl S.P.(HQ) Shri Parag Jyoti Baruah immediately on information visited the places of occurrence and took stock of the situations in both the places, taking with him the I/C. whom he instructed as to proper investigation of the case, but was transferred out of Jorhat for undergoing a training course in Human rights in June 2000. ..

From deposition of P.W. 2 Smti Sayeda Sabila Begum, wife of Sayed Abdul Munin, the following may be noted. When Sayeda Sabila switched on the light the assailants from outside ordered them to switch the light off. Coming out they thought that army had come. They asked in Assamese what type of people used to visit their house. The Khaki clad shawl wearing person appeared to have been the key man showing interest in the oven indicated that they were not of high standard. The 'policemen' covered their faces with black cloths. The betel chewing Assamese speaking man used to render the Assamese answers into Hindi. Soon after the vehicles moved Sabila raised her husband's loud appeal to the people to save him from being killed. She saw a military vehicle covered with net, might be Saktiman).

I/C Ladoigarh received the ejahar lodged there at about 7 A.M. same morning and the I/C visited her house at 8 A.M. interrogated several till 10 A.M. and thereafter took her to Jorhat Sadar P.S. by a Police Jeep. which, on minute examination, found to have had "strong similarities" with one that had gone to bring her husband the previous night. There Sabila replied to many questions put by a police officer..

The most significant fact is the constant effort of the I/C Shri Punya Bora in the evening to try to take Smti Sabila Begum alone with him away from her house that evening, as the relatives did not permit her to comply, ultimately taking her aside to the pond bank corner for 5 minutes and asking her whether she could recognise any one from the assailants at the time of the incident and Sabila Begum disclosing that when the black face wrapper of one assailant accidentally dropped down, she saw his face and recognised him to be one of the two constables of Ladoigarh Police outpost, who used to come to their house with I/C Shri Punya Bora to collect surreptitiously from her house "monthly fee/share", whom she, thus, saw earlier. The I/C was stated to have expressed surprise, as, according to him, that constable was supposed to have been on leave that day. This statement was not challenged at all in cross-examination. In fact there was no cross-examination at all.

Three months thereafter came a request from one Jayanta Hazarika of Sivasagar through one emissary named 'Latu'. As he said, he used to sit in the Munna Hotel, at Research Tinali, and its Phone No. was 2394463. Munna Hotel, situated at Research Tinali. and that he would be available at 10.00 O' clock. and that he himself did not know anything of my husband,, but Jayantada would reveal everything, if I would go there with him (Latu). As Latu was limping, asked about his ailment, he said that he was in the ULFA and Army nabbed him and applied electric shocks below his knee and his leg had scars up to the fingers, and so he could not stand and walk erect. Sabila's husband's two elder brothers did not allow her to go with anyone else, and if she wanted to go, both of them would go with her. Hearing this Latu left the place at 12 noon.

On the basis of the above evidence the identity of the perpetrators and the accomplices may be reasonably confined to the Constable of Ladoigarh outpost who was recognised when his face cover was accidentally dropped, Shri Jiten Gogoi of Bokakhat, the then Jorhat District Police administration, including the I/C of Ladoigarh Police outpost, Shri Paban Lahon, the constable who used to go to Sayad Abdul Munin's house to collect surreptitious

share of toll from his Scrap business.. It is noted that Shri Jiten Gogoi & Shri Paban Lahan did not response to their notices u/s.8B. The name of the constable of Ladoigarh outpost was not stated by the I/C. of the outpost.

This case deserves to be revived and re-investigated.

(C) Whether there was any conspiracy in targeting Sayed Abdul Munin & Md. Abidur Rahman and the motive behind the killing.

This term is replied in Parts, 1. Conspiracy in targeting, and 2. Motive behind killing.

I. Conspiracy in Targeting the Victim. Conspiracy in the context of the instant inquiry, will mean criminal conspiracy, which is defined in Section 126A of IPC as follows:

“When two or more persons agree to do or cause to be done-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

“ A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the First Report and the same is referred to... The question whether there was any conspiracy or not in the kidnapping/killing of Sayed Abdul Munin and Md. Abidur Rahman has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that Sayed Abdul Munin was required to pay commission or share of his profit from his scrap business which were surreptitiously collected from him by the I/C of Ladoigarh outpost. Md. Abidur Rahman was a student of Kakojan College and unsuccessful in his Higher Secondary Examination. Though the Commission was not told, he may have had incurred some political displeasure of someone. or wrath of the army, police or some Sulfas. The persons who participated in the act of actual kidnapping/killing on the fateful night, must have been the same or their agents and accomplices and as such, there

could be no other answer than that there was criminal conspiracy in the kidnapping/killing of Sayed Abdul Munin and Md. Abidur Rahman

There is evidence to show that the concerned SULFAs were enjoying protection from the police. There is the evidence of surreptitious collection of shares or commissions of profit from the scrap business of Sayed Abdul Munin. Such instances are found in some other cases of the series. Policemen would not normally make such collections unless some high ups were in the line. This may have disabled the police from taking the right actions in this case. That some of the SULFA were involved in this case is in evidence.. Similar situation was found in cases of several other police sheltering SULFA camps.. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an Extra-Constitutional authority. In case the concerned SULFAs were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the kidnapping/killing of the two victims there were number of persons in the act of killing. But there was also a course of conduct involving the deciders of the course of action culminating in the kidnapping/killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of kidnapping/killing show that there must also have been some authoritative institutional assurance of safety to the kidnappers/killers after the act was completed. Therefore, it is held that there was conspiracy of the worst kind, being among the protectors against the victims they were bound to protect under the law, in this case.

II. Motive behind the kidnapping/killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence that some boys came and warned Sayed Abdul Munin and gave him four days time to think over his wife and children. The incident came on the fifth day. She gave her husband Rs.5,000, perhaps thinking that the demand could be met, if came. The coercive fund collection drive was thus evident in several of the cases under inquiry... The modus operandi of this case is the same as in many other cases under inquiry. Therefore, there could be no doubt that forwarners having been a part of the conspiracy. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. The way in which, and with which Sayed Abdul Munin and Md. Abidur Rahman had been kidnapped/ killed leaves no doubt that the kidnappers/killers enjoyed complete immunity for their acts of kidnapping/killing. The way in which in this case, as in all other cases under inquiry, the investigations were made to fizzle out and the F.Rs. (Final Reports) were submitted show that the police had been in collaboration with the kidnappers/killers. All these also prove that the entire scheme was being remote- orchestrated from the top of the department.. Those in helm of the Department may be held accountable and need be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics leads to such a conclusion beyond reasonable doubt. .

The immediate motive of the kidnappers/killers could be any reward or satisfaction, promotion or better posting emanating from those who harboured the ultimate motive and engaged the kidnappers/killers. The desire of a consequence is the motive for an action. The members of the ULFA families and defaulters of the illegal levies have been executed brutally, for no fault of theirs, and only for their belonging to the ULFA family ,or a

defaulting in clearing levies; that was, for a status offence without any sanction of law and in blatant violation of the victim's Legal, Constitutional and Human rights. Intention and motive are often used synonymously. The motive was the perpetuation of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty and dangerous propensity. In Criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it. We have to ascertain from the circumstances, anterior, present and posterior to the incident of kidnapping/killing, The anterior circumstances were that Sayed Abdul Munin was a defaulter, and Md. Abidur rahman was politically undesirable for the kidnappers/kollers.

(D) Pinpointing responsibility on persons involved directly or indirectly in the killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt.

The Best Evidence Rule "Phipson on Evidence," 9th ed. P. 51, under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that 'the best evidence must be given of which the nature of the case permits.' has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, 'In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court".

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of all the cases under inquiry is, therefore, relevant and admissible,

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction (pp.4-5) said 6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such

a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e., when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such fact . . .

7.2 "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated (in another case) about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence. in the entire series of cases under inquiry.

The following common characteristics of all the earlier cases are found in this case while answering its terms of reference so as to justify a finding of a general plan of "ULFocide" i.e., deliberate killing of ULFAs and their families and relatives, or a plan of coercive collection of funds on their basis, namely :

1. That this killing involved allegedly ULFA-linked family, of Lohit Kalita & Hemen Kalita.
2. as in other cases, this kidnapping/killing, was committed at dead of night;
4. There was no mention of weapons in the kidnapping/killing. They said they wanted to talk.
6. The vehicles mentioned were Jeep and Maruti Gypsies, but none was detected or seized.
7. There was no police patrolling in the crime areas during the kidnapping/killing...
8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus; the modus operandi being to send armed men to the located house at dead of night and forcibly take the victim out of the house and either shoot him down there or take him away and shoot down and dispose the body untraceably, which is popularly termed "secret killing"...
9. There was general resentment against the Unified Command Structure/ Chief Minister..
10. There was connivance of SULFA; and omission to make any SULFA an accused...
11. The investigation did not commensurate with the seriousness of the crime perpetrated..
12. That modern scientific methods of investigation, finger/foot prints, were never used.

13. No condolence message was sent from the Govt. of Assam to the victim family.

14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam..

15 In this case death penalty has been imposed on Sayed Abdul Munin for defaulting in monetary contributions, and on Md. Abidur Rahman for his political potentiality..

16 That in all the cases, including this case there was remote-orchestration of the kidnappings/killings from top of the Ministry in a uniform manner through instrumentalities.

These common characteristics, along with evidence, prove beyond reasonable doubt remote orchestration from the Ministry through Police-Sulfa nexus using some Sulfas as the striking arms or executioners.

On the basis of the above evidence the pinpointing of the responsibility for being involved in the crime directly or indirectly may reasonably be on the Constable of Ladoigarh outpost who was recognised when his face cover was accidentally dropped, Sulfa Shri Jiten Gogoi of Bokakhat, Such officers of the then Teok Police Station, including the I/C of Ladoigarh Police outpost, as were connected with the investigation of the case and such of the officers of the Jorhat District Police Administration as may be proved to have excitedly helped or facilitated the commission of the kidnapping/ killings. Sulfa Shri Paban Lahan of Kakojan Arandhora village... It is noted as facts that Sulfa Shri Jiten Gogoi of Bokakhat & Sulfa Shri Paban Lahan of Kakojan Arandhora Gaon did not respond to their notices u/s.8B. The name of the constable of Ladoigarh outpost was not stated by the I/C. of the outpost SSulfa Latu could not be located in the given address..

E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term. (1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure, which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy,

ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed for restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disorder and army deployment in the State..

The Army Districts. In para 15 we discussed the structure and functioning of the Unified Command Structure. In course of the Commission's hearing sessions in the Upper Assam district of Sibsagar it was learnt that the Upper Assam districts of Tinsukia, Dibrugarh, Dhemaji, North Lakhimpur and Sibsagar have been declared as Army districts and that, as a result, Army has been operating in those districts. In so far as the declaration is concerned, this Commission has nothing to do. As the Commission has to enquire into some criminal cases of some of those Upper Assam districts, the Commission has to see whether this declaration had any impact on those cases. The Commission proceeds on the basis that during the period from 1998 to 2001 also similar declaration could have been there in those districts, and the Unified Command Structure and the Armed Forces Special Powers Act were necessarily in operation in those districts. If that was so, what were the functions and powers of the Army thereunder would be relevant in the context of prevention of such killings. We have already discussed this, including the leading case, in para 15. The Armed Forces (Assam and Manipur) Special Powers Act, 1958 was amended by the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972; and it is now The Armed Forces in the State of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram Special Powers Act, and it is extended to all these North Eastern States. By section 4 of the Amendment Act 1972, section 3 of the principal Act stands substituted, namely,

"3. If in relation to any State or Union Territory to which this Act extends, the Government of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area."

The Armed Forces Special Powers Act does not enable the Armed forces to supplant or act as substitute for civil power after a declaration has been made under section 3 of the Act. The power conferred under Clause (a) of section 4 of the Act can be exercised only where any person is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or firearms; ammunitions or explosive substances. In other words, the said power is conditional upon the existence of a prohibitory order issued under a law, e.g. under the Cr.P.C. or the Arms Act, 1959. Such prohibitory orders can be issued only by the civil authorities of the State. In the absence of such a prohibitory order, the power conferred under clause (a) of section 4 cannot be exercised. Similarly, under section

5 of the Act, there is a requirement that any person who is arrested and taken into custody exercise of the power conferred by the clause (c) of section 4 of the Act shall be made over to the Officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

Maintenance of public order involves cognizance of offences, search, seizure and arrests followed by registration of reports of offences (F.I.R.s), investigation, prosecution, trial, and in the event of conviction execution of sentences. The power conferred under the Act only provide for cognition of offence, search, seizure and arrest and destruction of arms dumps and shelters and structures used in training camps or as hide-outs for armed gangs. The other functions have to be attended to by the criminal justice machinery. Thus, the functions in aid of civil power have been ruled by law and not by discretion. The deployment of the Armed forces of the Union in a State does not in any way deprive the people of the disturbed area of the State of their fundamental rights to life and liberty. Any violation of such rights under such provisions would not countenance violation of Constitutional and human rights of the people by the Forces deployed in aid of civil power, nor would it prevent fake encounters from being murders, or a crime from being a crime, punishable under the law.

Throughout evidence the official witnesses say that they kill the boys in self defence. The idea varies, and some seem to be of the view that Ulfas are to be shot at sight. Fake encounters are often reported in news papers. Almost always some obsolete weapons/ammunitions and/or some Ulfas related papers are put near the dead bodies obviously for post mortem justification of the killings. This will not stand on the way of the spade being called a spade...

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail* and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the

society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner. While no training course will be appropriate, considering their exalted position and prestige, periodical periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea, their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, but using their services as "guides, "spotters", trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the Insolvency principle is not applicable to criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the citizens was effected, and by those whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any

sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gratia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In this case two youths, namely, Sayed Abdul Munin and Md. Abidur Rahman had been kidnapped as far back as on 25.3.2000, and they have not been heard of by those who would naturally have heard of them, had they been still alive. The Commission can, on the basis of evidence arrive at a finding on the death as facts. But the Commission may not be justified in arriving at such a finding without proof of the *corpus delicti*, i.e., that the killing has been done by someone. Such a finding, though it might have been justified if the *corpus delicti* was found, or there is evidence either direct or circumstantial, of the death of the person alleged to have been killed. If the evidence is circumstantial, it must be so cogent and compelling as to convince that upon no other rational hypothesis than being killed the facts could be accounted for. In the absence thereof, the question will be whether a presumption of fact of death could be drawn. Passage of time from his last being seen is one of such circumstances. The time varies from country to country. Since death involves question of rights, the period should be safely decided. To take guidance from English law, W.M. Best on The Principles of the Law of Evidence, 9th ed, p.344. S.409 writes:

"The fact of death may, however, be proved by presumptive as well as by direct evidence. When a person goes abroad, and has not been heard for a long time, the presumption of the continuation of life ceases at the end of seven years from the period when he was last heard of. And the same rule holds generally in respect to persons who are absent from their usual places of resort, and of whom no account and for whom no account can be given. But there is no fixed limit of seven years." This period of seven years is based on English statute. Where question of property rights are involved, it is reasonable to wait for a period applicable thereto. For example, the Presumption of Life (Scotland) Act, the period is thirteen years. Phipson on Evidence (9th ed. P.701) writes that "in one case the Court refused to presume death from unexplained absence under suspicious circumstances after twenty years." (Re. Lidderdale, 57 S.J. 3) Accordingly, we may wait for twelve years or so, unless otherwise proved earlier. In the instant case, the boy Hiran Deka was last seen near his shop and being taken away by the assailants on 18.8.99. The kidnappers were evidently believed to have been prowling secret killers, who could, therefore, be taken to have caused his disappearance. The evidence of Smti Sayada Sabila Begum shows that when Jayanta Hazarika of Sivasagar asked Jiten Gogoi what he has done with the two Kakajan "sikars" he

replied "safa kari dilu" I have finished them. Lastly, this Commission has included this case among the other cases of secret killing. From 25.3.2000 till date, more than six years have elapsed. Considering all the above circumstances, a presumption of the facts of death of the youths, namely, Sayed Abdul Munin and Md. Abidur Rahman, may not be reasonably drawn; and so it is found. However, the compensation need not wait so long, and should reach his family members as soon as possible. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate Assam, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to Sayeda Sabila Begum, mother of the then two months old Child by the victim Sayed Abdul Munin, only for his benefit, and to Md. Nazir Muhammad, the father of the victim Md. Abidur Rahman, for the benefit of the family, each, a sum of Rs.5,00,000.- (Rupees five lakh only). As a measure of abundant caution, the State may, in each case, insist on a bond of indemnity, should Sayed Abdul Mubub and Md. Abidur Rahman is found to be alive.. More than six years have already elapsed, and it brooks no farther delay.

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(34)

SHRI MANIK CH. KALITA KIDNAPPING CASE

Nalbari P.S. case No. 355/99

Date of occurrence. 3.9.2000

By this Commission's order dated 5.11.2006, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification.No.PLA 331/2005/1 dated 22.8.2995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry, with notice to the State Government..By virtue of the aforesaid Notifications the Commission is to inquire into, in each case.the following terms of reference, and any other related and relevant matters with recommendations, if any, namely:

- “(a) Circumstances , in each case, leading to the killing of its victim(s).
- (b) Identity of the killer(s) and accomplice(s), if any.
- (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
- (e)To make recommendations to prevent recurrence of such killing(s)
- (f) Any other matter related to or relevant to the purpose of this inquiry;”
- (A) Circumstances , in each case, leading to the killing of its victim(s).**

By the side of the Highway, at Kolakuchi, (Narayanpur), west of Shri Chandra Kalita's B.O.C. (Petrol pump) south of the highway, Shri Manik Kalita's saw mill is situate. On 3.9.2000, Sunday, at about 8.30 P.M. Shri Manik Kalita arrived at his saw mill back from Guwahati. Barely 5 minutes later two persons, one in khaki, and the other in civil dress entering the saw mill told Manik Kalita that their Sir called him to the waiting white Tata Sumo vehicle. The moment he arrived near the vehicle, he was forcibly lifted and taken away in that vehicle. No clue was found. The FIR to the above effect was lodged in the Nalbari Sadar P.S. He has not been seen or heard of since then. Two seemingly ransom demands were allegedly made, one for Rs.5,00,000 (Rupees five lakh) from Shillong, and the other from Tamulpur, but the callers did not intimate the mode and places of payment, hence nothing materialised.

(B) Identity of the kidnappers and accomplice(s), if any.

..... **Accomplices**
are the parties to the crime. On the basis of degrees of complicity to the crime, law divides the accomplices (parties to a crime) into perpetrators and accessories. An accessory is one who excites, helps the commission of an offence by the perpetrator. Perpetrator means exclusively the person who in law performs the offence. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. The kidnapping/killing of Shri Manik Ch. Kalita was not secret as to time and place of kidnapping, but as to the identity of the killers and their accomplices, if any. It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator the criminal prohibition, offends against it with the necessary *mens rea* or negligence. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous the person who being directly struck at by s. The identity of the killers and their accomplices, if any, has to be on the basis of evidence on record.

P.W. 1 Smti Niva Kalita said that on 3.9.2000 her husband Shri Manik Kalita who was a first class contractor of P.W.D., Assam, at about 11 A.M. asked her to expedite the cooking as he was to go to Guwahati as requested by another contractor Shri Tapan Deka. On her enquiry as to what business he could have on a Sunday, he replied that Shri Tapan Deka urgently requested him to go to Guwahati, accordingly she expedited the meal which he took at 12.30 P.M. and proceeded at 1 P.M. He also asked her to prepare Roti for evening meal as he was unwell and would be returning soon. He proceeded by their Tata Sumo and she awaited eagerly for his return. Shri Bapdhan Kalita, a mill employee came and informed her that her husband was forcibly taken away in a vehicle from the mill. Later on another employee Shri Bipul Kalita lodged an FIR at Nalbari Sadar P.S. stating about the kidnapping. She then heard that they returned from Guwahati at about 8.30 P.M. and that her husband was kidnapped at about 8.30 P.M. No police came or asked her anything after the *ejahar* was lodged by Bipul Kalita. Though she herself did not ask anything, her brother-in-law Shri Giridhar Kalita asked Tapan Deka about the incident and Tapan deka told him something which he had not conveyed to her. Though she has been expecting her husband every day, she has not heard anything about him till date. There were phone calls demanding ransoms. One call came from Shillong demanding Rs.5,00,000 (Rupees five lakh), another from Tamulpur demanding Rs.3,00,000 (Rupees three lakh), but the calls proved to be fictitious. In cross-examination it was evident that the saw mill was started three years prior to the incident. Their brand new Tata Sumo was purchased six months prior to the incident. Her husband told her that when he submitted tenders, for National Highway, Railway contracts at

Guwahati, Boko and Goalpara, the Sulfa boys used to threaten him, without mentioning any of their names. At the time of incident he was carrying on a culvert repair work at Aie river bridge. Her husband's business relation with Shri Tapan Deka of Nalbari was very recent. There was no family relationship Shri Tapan Deka did not come to console her after the incident. There was nobody in the ULFA from her parental side. Sometimes it came to her mind that the Sulfas who opposed her husband in submitting tenders might have caused the incident. After the incident the mill continued for three years; whereafter it was shifted away and her two brother-in-laws started a stone crusher mill in that place and used to pay Rs,2000 (Rupees two thousand) to her as monthly rent. She has two sons, first aged 15 years, reading in class X, the second, 12 years, reading in class VIII.. Some outstanding P.W.D.bills of her husband are still outstanding, and she will be benefited if those were paid. soon.

P.W. 2. Shri Anil Deb Nath was the night Chowkidar of the Mill. He starts his duty from 6 P.M. and continues up to dawn. Around 7 P.M.that day Shri Manik Kalita with his friend Shri Tapan Deka came to the mill and were seen discussing something inside the saw mill. While Tapan Deka remained in the Mill, Shri Manik Kalita was preparing to go home. Meanwhile a white Tata Sumo stopped in front of the mill and a policeman with short weapons on his shoulder got down and told Manik Kalita that his "Sir" was calling him. As soon as Manik Kalita came to the Tata Sumo, the policeman who called him and another alighting from the Tata Sumo held and dragged him into the vehicle and sped away. The driver of the Mill Shri Bhaben Kalita asked the chowkidar to inform the family members of Manik Kalita. Next morning the police came to the mill and enquired what happened. In cross he said that he was from Khudra Katala of Nalbari district. By that time he was serving 3 years in the mill. Shri Garga Kalita was clerk, Shri Haricharan, a labour, Bapdhan and Nagen were helpers in the mill. Sawing was done everyday in the mill.using its own, and customer's timbers. There was a telephone connection therein. It was adjacent to the highway. There were no residential houses near the mill, a petrol pump was there about 1 furlong away. Manik Kalita used to come to the mill now and then, not everyday. Shri Tapan Deka also used to come there now and then.

P.W. 6 Shri Giridhar Kalita was informed about the kidnapping by Bapdhan Kalita at about 8.30 p.m. at their Kairara village residence and both immediately came to the mill and took the story from the Chowkidar Anil Deb Nath and while both of them were on way to the Police station to lodge an FIR, on way they saw their uncle Shri Chanda Kalita standing on his threshold, reported the matter to him when Chandra Kalita asked them to first try to find Manik Kalita out, and that he would inform the police. What the two did thereafter was already narrated by Bapdhan Kalita in his deposition..As. for most of the time Shri Giridhar Kalita had been a Govt. High school teacher serving and staying elsewhere, he did not know the details of the saw mill business or contract business of his elder brother Manik Kalita, except what were otherwise evident. According to him He said, there were several post kidnapping telephone ransom calls to their address, but all were inconsistent and no addresses or destinations for payment were stated and hence, none could be followed up. There was one from Shillong demanding five lakhs, one from Tamulpur demanding three lakhs but none gave the destinations and time of payment and none could be paid. According to him Manik Kalita did not leave behind any fat bank balance being only few thousands. The saw mill was one small Bend saw mill for sawing timbers for furniture

which, according to him, was permitted by law. He did not know much about the internal management of the mill, except that timbers were brought by customers to get those sawn at the mill. According to him, Manik Kalita's relationship with Shri Tapan Deka was rather recent and not that intimate. As his elder brother Manik Kalita was a simple and respectable person without enemies, his kidnapping and loss was a puzzle for him, as he did not have enemies. He did not know whether Manik Kalita was also taking Railway contracts, like Shri Tapan Deka, with whom Manik Kalita's terms were recent and not intimate. He knew Shri Dibakar Deka as they were from the same place, but he did not know about the things alleged against him. Nothing in the nature of family discord or business disputes could be gathered from the witness, who appeared to be a simple school teacher not versed in business management in the matter of the saw mill and contract business of his elder brother Shri Manik Kalita.

P.W. 3 Shri Tapan Deka deposed that on 3.9.2000 he came to the saw mill between 8.30 and 9 P.M.; and that earlier he came there at about 4 P.M., met Shri Manik Kalita and in his Tata Sumo vehicle both proceeded to Maligaon and came back to the saw mill at about 8.30 to 9 P.M. and while talking together, Shri Anil Deb Nath, Chowkidar told Shri Manik Kalita that he was wanted by "Sir" waiting at the parked vehicle, and Manik Kalita unsuspectingly went towards that vehicle and when he did not come back, he (Tapan Deka) asked Anil Deb Nath what had happened, and he replied that Manik Kalita went away with "Sir", so he (Shri Deka) went home. Next morning (4.9.2000) someone telephoned him from the Kalita Timber Depot (Saw Mill) that Shri Manik Kalita had not returned till then, he was not worried as Shri Kalita used to go out so on his business. When Shri Manik Kalita went out, he did not see towards the waiting vehicle as they were inside a room. For about 5 years they were carrying on business side by side. When Anil Deb Nath said "Sir" wanted Manik Kalita, he thought someone either some Police Officer or Forest Ranger might have come as usual. He did not ask Anil Deb Nath after the incident as to actually who was the man, he called "Sir". He also did not think over that question. He read news items on the kidnapping, but did not remember whether that involved Shri Dibakar Deka, whom he did not know. He did not discuss the incident with any member of Manik Kalita's family, as he had no terms with them. Manik Kalita did not tell him about facing extremists demanding money from him. He was acquainted with Manik Kalita only during their business period, as Class I contractors, at Nalbari, not earlier. He did not know if Manik Kalita had business outside Nalbari. It was not that they used to meet regularly, the fact was that as the mill was roadside, whenever he happened to pass it by, and saw Manik Kalita there, he used to step in. He utilised Manik Kalita's diesel Tata Sumo to go to a Railway officer at Maligaon for his purpose, and Manik Kalita also came with him. While at that time he had Railway contract work, Manik Kalita did not have Railway work at that time. Though he had his Maruti Zen, he took the diesel Tata Sumo to Maligaon. Manik Kalita's saw mill was of moderate size and so was its timber stock, and he did not know wherefrom it came. Police interrogated him asking who were the persons that came, he said he did not see them. He had heard of Shri Dibakar Deka, but did not know him personally, and police did not ask about him. He knew the Assam Service Station of Shri Chandra Kalita and he used to take diesel therefrom. He did not know that Dibakar Deka took diesel earlier that day, 3.9.2000, from that Service Station or that he went also to the nearby P.C.O. The witness was confronted with his statement before police under s.161 Cr.P.C. dated 3.9.2000, namely, "on their way back from Gwahati, they went to Shri Chandra Kalita's petrol pump where they were told that earlier Shri

Dibakar Deka, came there and enquired about the ownership and business position of the saw mill and took diesel and thereafter went to the PCO and having failed to telephone, asked the P.C.O. men to contact him if they had any difficulty, and for that he gave his mobile number to the PCO. Shri Tapan Deka's reply was, "I do not know what the police has written I do not remember to have made any such statement to the police." No member of his family was ULFA. When Anil Deb Nath informed about "Sir" awaiting him, Shri Manik Kalita went as usual. Asked about his own impression about the kidnapping, he said that Manik Kalita rose from a humble beginning by dint of his own work, he was very simple and popular person, and his kidnapping was really a puzzle to him.

P.W. 4 Shri Bapdhan Kalita was an employee of Shri Manik Kalita looking after his work site at Boko, for about 8 months, and the work being over by then, on 3.9.2000 he was at his Kairara village house about a km away from that of Manik Kalita in the same village. At about 8/8.30 P.M. an employee of Shri Manik Kalita came and informed him that "Dada" (meaning Manik Kalita) was taken away. Immediately he proceeded to Manik Kalita's house and found Manik's younger brother Shri Giridhar Kalita and both proceeded to the mill, about 2 kms away therefrom. There they asked the details from Anil Deb Nath who said that a white Tata Sumo stopped near the gate, two youths alighting, one stopped at the gate while the other entered the mill premises and told Manik Kalita that "Sir" was waiting for him in the vehicle, and Kalita proceeded to the vehicle which then went away first towards Nalbari, but later turned towards Guwahati. Shri Tapan Deka who was with Manik Kalita waited for some time and as Kalita did not come back, he was afraid, and went home. The two then proceeded towards the Nalbari P.S., but on the way they saw Chandra Kalita standing at his threshold and informed him of the occurrence when he said he would inform the Police Station and we should hurry up to find out Manik Kalita; accordingly they went to Boko work site, thinking he might have gone there, but not finding him they went to Manik Kalita's brother-in-law's house at Guwahati where also they searched at different possible places as shown by his brother-in-law but Manik Kalita had not gone there; and by then it was dawn, and they came back to Nalbari, the witness driving the Mill's Tata Sumo, all along the journey, as the driver Md. Sayeed Ali was not immediately available. The witness was not otherwise related, but as co-villagers they were cordial. He purchased his truck before the incident with his own money from his local private timber business. While at Boko they used to lend their Roller for levelling a local football field, but on one occasion when it could not be made available, some local boys were resentful, but soon it was sorted out. He knew Shri Pranab Mahanta of Boko who was a powerful man there, but he did not know if Manik Kalita had any common business with him or whether Manik Kalita had any Railway contract work. He did not contact Shri Dibakar Deka after the incident. The witness was confronted with the statement recorded u/s. 161 Cr.P.C. on 15.10.2000, "a tender was submitted in the name of Shri Manik Kalita and that was jointly with Pranab Mahanta and Shri Pranab Mahanta obtained that contract and that led to differences between Shri Pranab Mahanta and Shri Bhagya Kalita". The witness replied "I never gave any such statement and how it was there, I do not know. Police did not interrogate him in the case. He denied the suggestion that he made the above statements and tried to suppress the same before the Commission. He also denied the suggestion that he knew Shri Dibakar Deka before the incident and suppressed it before the commission.

P.W. 5 Shri Bipul Kalita was a helper in the saw mill of Manik Kalita and on

3. 9.2000 he left the mill by 4/4.30 P.M. On 4.9.2000 one member of Manik Kalita's family gave him a piece of paper to be given to the Nalbari Police station and he did so, at about 11/12 noon. Police did not ask him anything, and it was the FIR in the case. He did not ask anything to Anil Deb Nath, and as he was working at the back side, he did not see who were coming and going. He being a daily labourer his work was over since next date of the incident and he sought a job elsewhere.

P.W. 6 Shri Giridhar Kalita was the younger brother of Shri Manik Kalita was a Govt school teacher serving away from their house, but was at their house at the time of the kidnapping, and he, along with Bapdhan Kalita were proceeding towards the Nalbari P.S., but half way they saw their uncle Chandra Kalita standing at his threshold, and gave him the information when he advised them to urgently search and find out Manik Kalita, and he himself would inform the Police station, which he accordingly did. Gitidhar Kalita corroborated as to their going to BoKo to Manik Kalita's father-in-laws house and work site there, then to Manik's brother-in-law's house at Guwahati and some other places there till dawn and then returning to their houses. Giridhar said that the saw mill of Manik Kalita was a small bend saw mill for sawing wood for furnitures which was then allowed under the law. He could not say whether Manik Kalita was taking railway contracts, and said that after kidnap, he had very little bank money. He also said that there were incnsistent ransom calls from Shillong, Tamalpur and Guwahati but no destinations, of amounts and mode of pauments were stated, so that nothing could be done in response. According to him also the relationship of Manik Kalita with Shri Tapan Deka was recent and not intimate. He knew Shri Dibakar Deka as they belonged to the same place, but he did not know that he came to Chandra Kalita's BOC pump, took diesel there and even went to the near by P.C.O. and failing to make a call there he asked the PCO men to contact him and gave his mobile number to them. It seemed he viewed Dibakar Deka as an unconcerned person..

N.W 6 Shri Debajit Khanikar was an Attached S.I of Nalbari P.S. and on 3.9.2000 Shri Chandra Kalita, owner of B.O.C, Petrol pump telephonically informed Nalbari P.S. that two miscreants coming by a white Tata Sumo entered the saw mill of Shri Manik Kalita and kidnapped him As the O.C. was on leave he, with the Second Officer Shri Sarbananda Gobain and staff, immediately proceeded to the place of occurrence. His investigation was of routine and random nature, being devoid of any penetrating hypothesis or precise clue. He first went to the Nalbari Reserve and received the prototype reply that none from that Sulfa camp came out in the appropriate evening. One or two Sulfa laders therefrom were said to have been interrogated, but there was no record. Then his interrogation of the relatives of Shri Manik Kalita brought him nothing decisive. Shri Giridhar Kalita gave an account of anonymous ransom demands without useful particulars. Responding to one from Shillong, the relatives wanted to see a proof of Manik Kalita being with them, say, a phone call or a letter, but nothing of the kind came. The other anonymous callers did not even give any destination of meeting for payment As there were some evidence of Shri Dibakar Deka having come to, and taking diesel from the B.O.C, Petrol pump of Shri Chandra Kalita in a white Tata Sumo, that afternoon, before the incident, Shri Khanikar left for Guwahati and where he got Shri Dibakar Deka called to the Geetanagar P.S. through its O.C. and collected some infomation from Shri Dibakar Deka and his self driven White Tata Sumo with tainted glasses, and its registration number, WB 74/B- 6714, and the P.R.C.s allotted to him and that they (the PRCs) were often provided A.K.47 rifles..O thing was clear from these information, namely, that , Dibakar Deka was an inmate of the Usha Court, where alone, within the jurisdiction of the

Geetanagar P.S. P.R.C.s were provided..Dibakar Deka admitted his journey, and taking of diesel from that B.O.C. pump, but said, he was going to his father-in-law's house at Pathsala beyond Nalbari, and that he returned and reached Guwahati at 11.30 P.M the sane day.. However, it was known that Dibakar Deka was the informant in the Grrtanagar P.S. case No.31/99 being the Usha Court grenade attack case. Not to be forgotten, the police secret sources also whispered that the Sulfas demanded a share of the profits of Manik Kalita's business proceeds, for failing to satisfy that demand, he was kidnapped, without mentioning who were those and how they could be apprehended..The records do not show that this hypothesis was tested. One Bipyl Kalita lodged he FIR whereupon the Nalbari P.S. case No.355/2009 was registered.Alerting the police stations and outposts of the State did ot bring any feedbacks.The I.O. also resorted to randomambush operations at some places, but without success.Shri Bapdhan Kalita, an employee stated that in his Boko woks there was some rift regardi non lending of the Road Roller, but that was settled amicably.He said P.S.O.s are to remain with the person to whom allotted.The photographs of some persons were shown to the employees of the saw ill, but none said tosed to have been the culprits.

N.W. 1.Shri Ranjan Bhuyan, then D.S.P (HQ),Nalbari district, Nalbari received the information about the incident at about 8.30 P.M. on 3..9.2000 .On the F.I.R. lodged the Nalbari P.S.Case was registered. The I.O. immediately alerted all police stationsand outposts of the State for apprehension of the culprits and the vehicle used by them. O,C visited the place of occurrence and interrogated people, but neither the cukprits nor the vehicle could be traced out.He was not specifically asked to supervise the case He neither visited the saw mill nor met Shri Manik Kalita at all. The B.O.C. petrol pump, to his information belonged to one Chandra Kalita, whom he knew, and not to Manik Kalita. He knew Chandra Kalita as the well-to-do president of Nalbari Ras Utsab, but did not know if the two were friends..Shri Bhuyan visited the Saw mill and was given the number of the vehicle used by the culprits by one Shri Prafulla Kalita whose motor parts shop was near the saw mill. and he sent the I.O to verify it at Guwahati, but there was no feed back.He knew Shri Dibakar Deka, a SULFA, who stayed in Guwahati, which part he did not know.and who met him several times at Nalbari. He did not know if Shri Dibakar Deka visited the SULFA camp located within Nalbari Police Reserve, but the camp having some family quarters and permission being necessary to visit it, he did not think that Dibakar Deka could be a visitor.During day time permission had to be obtained from the Reserve Officer, during night time from the D.S.P. or any higher officer.He knew that on 3.9.2000 while coming to Nalbari Shri Dibakar Deka took petrol from the BOC petrol pump of Chandra Kalita. Shri Bhuyan also knew from record that after taking petrol Dibakar went to the nearby P.C.O and tried to communicate with someone, but could not do so.It was also correct, as per evidence, that failing to make any call, Dibakar Deka told the PCO man that if they had any problem they could contact him on his telephone number which he gave then.He came to know about it in course of his investigation of the case. Knowing so much he instructed the I.O to. investigate the particulars of Dibakar Deka, but the same was not recorded. The witness knew that it was correct that the vehicle used by Shri Dibakar Deka,while coming to Nalbari was a white.coloured Tata Sumo numbered WB 74-B 6714. He did not know Tapan Deka who was a co-contractor with Manik Kalita.

Shri Sarbananda Gohain, then Second Officer of Nalbari Sadar P.S. was functioning as O.C. of Nalbari P.S from 3.9.2000 to 11.9.2000. On 3.9.2000around 3.10/15 P.M. he

was informed by Shri Chandra Kalita that his nephew Shri Manik Kalita was kidnapped by some unknown miscreants who came in a white Tata Sumo. Immediately thereafter he along with S.I Debajit Khanikar with a section of APBN personnel rushed to the place of occurrence arriving there around 10.30 P.M. He directed the S.I Sebijit Khanikar to record the statements of the employees of Kalita Timber Depot. before that I already informed the Addl S.P.(HQ) and D.S.P.(HQ) about the incident and also informed the Ghograpar and Barama Police stations to intercept any white Tata Sumo suspected to have been involved in the incident. Then he, along with Khanikar, went to the Nalbari Police Reserve and enquired about the Sulfa inmates there if any Sulfa from the camp went out that night, and if any of them possessed white Tata Sumo. but he replied that neither they went out nor did possess any white Tata Sumo. They searched different places for the same purpose, but in vain. One Motor part dealer gave one Registration number, which on verification was found to have been a Motor scooter number. While the F.D entry was made on the first information received, the FIR was lodged by Shri Bipul Kalita, brother of Manik Kalita at the P.S. around 10.20 A.M. on 4.9.2000 whereupon the Nalbari P.S. Case No 355/2000 was registered and its investigation was entrusted to Shri S.I Debajit Khanikar. who discussed the case with the D.S.P.(HQ) and visited Usha Court, Guwahati and other places in course of investigation. the O.C. resumed his office on 11.9.2000 on which date the S.P gave a supervisory note in the case. Immediately after the G.D entry No.95 of 3.9.2000 was made the functioning O.C. informed the D.S.P.(HQ) and Addl S.P.(HQ) and alerted the neighbouring Police stations of Ghograpar and Barama police stations, and later on 6.9.2000 similar W.T. messages were sent to the other Police Stations of the districts of the neighbouring districts including Guwahati. Shri Gohain was in Nalbari P.S. from December 1999 to 25th december 2000. There was a SULFA camp in the Nalbari Police Reserve, but he did not know the number of SULFAs staying there. He did not know whether a list of SULFAs in that camp was furnished to the Police Station itself. He did not see any activities of the camped SULFAs in breach of law and order. He enquired of the SULFAs if someone or other were out of the camp on the fateful night. From the case diary it is seen that on 4.9.2000 at 12 midnight he examined some of the SULFA inmates of the Nalbari Police Reserve and they told him that they did not know about the incident and that they had not gone out of the camp that night and they were not using any white Tata Sumo. However, the names of the persons alleged to have been examined have not been stated. He did not enquire about the antecedents of Shri Manik Kalita. whom he knew as a contractor and owner of the Timber depot. He did not know if any one from Manik Kalita family was in the ULFA. The Timber depot was not raided by police. He heard the name of Dibakar Deka as people mentioned his name, but he did not know him. He knew, Dibakar Deka took petrol from Chandra Kalita's petrol pump. N.W. Shri Dibakar Deka in his affidavit and deposition said inter alia, that he did not know about the statement made by Shri Ranjan Bhuyan Additional S.P.(HQ) Sonitpur that he had visited Nalbari on 3.9.2000, the date of kidnapping of Shri Manik Kalita. He stated that he did not remember he did so, but he reiterated that he used to go to his native place at Nalbari occasionally to visit his family and that his father-in-law's house was also that side and therefore he had to go to Nalbari at least once or twice a month. He did not have any personal knowledge of kidnapping of Manik Kalita on 3.9.2000. He had never been associated with the ULFA and he has been residing at Japorigog, Guwahati since 1994.

with his wife and children and has established his business. M/s D.D. Enterprise. He read up to Class X in Pub Nalbari High School and had to give up studies in 1985 due to family problem. They were six brothers, the eldest is dead, he was No. 4 the youngest Shri Pankaj Deka left their house in 1999 and joined the ULFA wherefore the army and police frequented their house and troubled the members. The 3rd is a cultivator and the others are in business. After surrender he received financial assistance of Rs. 1.6 lakhs. He was arrested in a TADA case at Tezpur where he went to meet his ULFA cousin, was detained in jail for a day and released, finding nothing objectionable. To avoid such troubles he surrendered as advised by Shri Upen Deka, Assistant General Secretary, AASU. He could drive Maruti car and Maruti Zen, but not Tata Sumo, which, according to him was a big vehicle. >..

N.W. 7 Shri Mani Saikia was the O.C. of Geetanagar P.S. whereunder the Usha Court apartment of Zoo road fell., but he received no information of the Nalbari P.S. case No. 355/2000. However, he remembered that some police officer from Nalbari P.S. came to Geetanagar P.S. and asked him something about some vehicle but did not remember if he asked someone to be called from the Usha Court and, if so, what he did. Indeed his memory seemed to be feeble in this regard. Regarding Shri Dibakar Deka was a resident of Usha Court apartments as he was the complainant in the Geetanagar P.S. case No 2 being the grenade attack case. He remembered that Shri Jugal Kishore Nahanta was also an inmate of Usha Court of Zoo road and he saw both of them while checking vehicles and Dibakar Deka was himself driving a Tata Sumo, but he used to change his vehicles from time to time, and further knew that later Dibakar Deka used to stay somewhere else. He saw Jugal Kishore Mahanta who was driving a Baleno at that time. According to him the question whether Dibakar Deka was a SULFA was controversial, some saying that he was never in the ULFA, some others saying that he surrendered only to avail its financial benefits. Shri Jugal Kishore Mahanta of Usha Court was, he knew, provided with two p.s.os with A.K. 47 rifles, who used to be in uniform, that meant, were provided by Police Headquarters. He did not know whether Dibakar Deka was involved in any case, but he was known to have been involved in the Coal syndicate.

N.W. 6 Shri Debajit Khanikar was an Attached S.I. of Nalbari P.S. and on 3.9.2000 Shri Chandra Kalita, owner of B.O.C, Petrol pump telephonically informed Nalbari P.S. that two miscreants coming by a white Tata Sumo entered the saw mill of Shri Manik Kalita and kidnapped him. As the O.C. was on leave he, with the Second Officer Shri Sarbananda Gobain, and staff, immediately proceeded to the place of occurrence. His cross examination was of routine and random nature, being devoid of any penetrating hypothesis or precise clue. He first went to the Nalbari Reserve and received the prototype reply that none from that Sulfa camp came out in the appropriate evening. One or two Sulfa leaders therefrom were said to have been interrogated, but there was no record. Then his interrogation of the relatives of Shri Manik Kalita brought him nothing decisive. Shri Giridhar Kalita gave an account of anonymous ransom demands without useful particulars. Responding to one from Shillong, the relatives wanted to see a proof of Manil Lalita being with them, say, a phone call or a letter, but nothing of the kind came. The other anonymous callers did not even give any destination of meeting for payment. As there was some evidence of Shri Dibakar Deka having come to, and taking diesel from the B.O.C, Petrol pump of Shri Chandra Kalita in a white Tata Sumo, that afternoon,

before the incident, Shri Khanikar left for Guwahati and where he got Shri Dibakar Deka called to the Geetanagar P.S. through its O.C. and collected some information from Shri Dibakar Deka and his self driven White Tata Sumo with tinted glasses, and its registration number, WB 74/B- 6714, and the P.R.C.s allotted to him and that they (the PRCs) were often provided A.K.47 rifles. Dibakar Deka admitted his journey, and taking of diesel from that B.O.C. pump, but said, he was going to his father-in-law's house at Pathsala beyond Nalbari, and that he returned and reached Guwahati at 11.30 P.M. the same day. However, it was known that Dibakar Deka was the informant in the Geetanagar P.S. case No.31/99 being the Usha Court grenade attack case. Not to be forgotten, the police secret sources also whispered that the Sulfas demanded a share of the profits of Manik Kalita's business proceeds, for failing to satisfy that demand, he was kidnapped, without mentioning who were those and how they could be apprehended. The records do not show that this hypothesis was tested. One Bipul Kalita lodged the FIR whereupon the Nalbari P.S. case No.355/2000 was registered. Alerting the police stations and outposts of the State did not bring any feedbacks. The I.O. also resorted to random ambush operations at some places, but without success. Shri Bapdhan Kalita, an employee stated that in his Boko works there was some rift regarding non lending of the Road Roller, but that was settled amicably. He said P.S.O.s are to remain with the person to whom allotted. The photographs of some persons were shown to the employees of the saw mill, but none said those to have been the culprits. . .

N.W. 4 Shri Bidyut Burhagohain was the Addl S.P(HQ) Nalbari District, Nalbari on 3.9.2000 and was informed of the case by some officer of the P.S. that Shri Manik Kalita of Kalita Timber Depot was kidnapped by some 4/5 persons coming in a white Tata Sumo that night. When immediately he came to the P.S. he was told that the white Tata Sumo kidnapping Manik Ch. Kalita first proceeded towards Nalbari and after some distance turned back and proceeded towards Guwahati; and so he instructed the P.S. to alert all the police stations and outposts enroute from Nalbari to Guwahati, and he himself proceeded to the Kalita Timber Depot, but finding nobody there returned to the P.S. Then S.P. Nalbari Shri A.Y.V. Krishna requested him to personally supervise the case and issued a supervisory note which the witness carried out. The then O.C. Shri Ghanashyam Bora, since deceased, asked S.I. Shri Debajit Khanikar to investigate the case. Shri Burhagohain was addl. S.P. there from 1.6.99 to 26.2.2001. Within 45 minutes he arrived at the Timber depot. did not find any one there, no public was there and then he came to the petrol depot and asked if any white Tata Sumo came and took petrol therefrom, the man said no such vehicle came when he was there, but he was not there round about 8.30 P.M. The petrol pump belonged to Chandra Kalita known as established business man and good social worker. The witness also went to the nearest police station Ghograpar and found only a constable, but called in an officer and took information from him and alerted him. He consulted frequently with the I.O. about investigation and so no written note was needed. He met Chandra Kalita who said that Manik Kalita was the son of his elder brother and that there was good relation and there was no business rivalry between the two families. According to him, Manik Kalita's family had no relation with the ULFA. and did not share any business with any Sulfa. He heard about Dibakar Deka, but did not know him personally. He examined Dibakar Deka who told him that day (3.9.2000) he went to Pathsala and came back the same day, Pathsala which was located beyond Tihu on the National Highway. Dibakar went to the

BOC petrol depot and to the nearby PCO. Keeping in mind the possibility of the culprit escaping to Bhutan the police alerted all the Police stations and outposts of the State. He also thought that kidnapping of Manik Kalita could have been for money and ransom. There was surveillance over the Sulfaas of Nalbari Reserve Sulfa camp, but not over those who stayed outside the Reserve. According to him, the agency could be ULFA or NDFB. When told that Smti Niva Kalita said that her husband told her that in submitting tenders for contractss, the SULFAs had given him lot of troubles, and therefore she thought that the Sulfas were involved in the kidnapping, Shri Buragohain said that they also hasd some such idea, for which reason they examined some Sulfas of Nalbari Reserve Camp but found no link with the incident. In fact, this clue ought to have been vigorously pursued. It appears that Nalbari Police Authorities always guaranteed good conduct and innocence of the Nalbari Reserve sheltered Sulfas and this had its penumbra on the evidence of Nalbari cases..

N.W. 1. Shri Ranjan Bhuyan, then D.S.P (HQ), Nalbari district, Nalbari received the information about the incident at about 8.30 P.M. on 3.9.2000. On the F.I.R. lodged the Nalbari P.S. Case was registered. The I.O. immediately alerted all police stations and outposts of the State for apprehension of the culprits and the vehicle used by them. O.C visited the place of occurrence and interrogated people, but neither the culprits nor the vehicle could be traced out. He was not specifically asked to supervise the case. He neither visited the saw mill nor met Shri Manik Kalita at all. The B.O.C. petrol pump, to his information belonged to one Chandra Kalita, whom he knew, and not to Manik Kalita. He knew Chandra Kalita as the well-to-do president of Nalbari Ras Utsab, but did not know if the two were friends.. Shri Bhuyan visited the Saw mill and was given the number of the vehicle used by the culprits by one Shri Prafulla Kalita whose motor parts shop was near the saw mill. and he sent the I.O to verify it at Guwahati, but there was no feed back. He knew Shri Dibakar Deka, a SULFA, who stayed in Guwahati, which part he did not know. and who met him several times at Nalbari. He did not know if Shri Dibakar Deka visited the SULFA camp located within Nalbari Police Reserve, but the camp having some family quarters and permission being necessary to visit it, he did not think that Dibakar Deka could be a visitor. During day time permission had to be obtained from the Reserve Officer, during night time from the D.S.P. or any higher officer. He, however, did not say that Diibakar Deka did not visit that Sulfa camp. He knew that on 3.9.2000 while coming to Nalbari Shri Dibakar Deka took petrol from the BOC petrol pump of Chandra Kalita. Shri Bhuyan also knew from record that after taking petrol Dibakar went to the nearby P.C.O and tried to communicate with someone, but could not do so. It was also correct, as per evidence, that failing to make any call, Dibakar Deka told the PCO man that if they had any problem they could contact him on his telephone number which he gave then. He came to know about it in course of his investigation of the case. Knowing so much he instructed the I.O. to investigate the particulars of Dibakar Deka, but the same was not recorded. The witness knew that it was correct that the vehicle used by Shri Dibakar Deka, while coming to Nalbari was a white.coloured Tata Sumo numbered WB 74-B 6714. He did not know Manik Kalita's co-contractor Shri Tapan Deka.

N.W. 5 Shri Manoranjan Kakoti was transferred to Nalbari P.S. as an attached S.I on 20.1.2003 and on the same date the Nalbari P.S. case No. 355/2000 was endorsed to him for investigation. He studied the case records and the action taken by his predececessor Shri Debajit Khanikar and the C.I/O.C. Shri Shri Birendra Kumar Hazarika,

who advised him to prepare the progress report as there was no trace of the accused, accordingly prepared the progress report which was approved by the Addl S.P.(HQ) Shri Jitmal Doley. The case was accordingly returned in F.R No. 103 dated 30.6.03 as true u/s.448/364 IPC, but no trace for making an accused

N.W. 7 Shri Mani Saikia was the O.C of the Geetanagar P.S. whereunder the Usha Court apartments fell, but he received no information about the Nalbari P.S. Case No. 355/2000 on 3.9.2000, however, later one officer from Nalbari P.S. came to Geetanagar P.S. and asked him about some vehicles, but he did not remember if that I.O asked him to call someone from somewhere, and said that if he had asked so, he must have called them. Such a reply based on feeble memory of the witness was of no use to the Commission. He knew that Shri Jugal Kishore Mahanta and Shri Debakar Dekka were inmates of Usha Court at that time; and he knew about the latter as he was the complainant in the Usha Court Grenade attack on Usha Court. case No 29/99, but later he shifted from the Usha Court. He had also seen Dibakar Dekka during vehicle checking as some of his vehicles were involved in cases. He saw Dibakar Dekka driving a Tata Sumo, but he often used to change his vehicles. On all those occasions Debakar Dekka was himself driving the vehicles. At least on one occasion he checked Jugal Kishore Mahanta also when driving a Baleno. He knew that Shri Jugal Kishore Mahanta was provided with two P.S.O.s who used to be in uniform, that indicating that those were provided by police Headquarters. He was not sure whether Dibakar Dekka was provided with security, and whether he was a SULFA was controversial, as sometimes it was said that he was never in the ULFA, some said that he surrendered only for the financial benefit from surrendering. The Usha Court was a fiefdom of Geetanagar P.S., but the informations given were not definite anyway..

N.W. 8 Shri Y.V. Krishnan the then S.P. of Nalbari district, receiving information from the O.C. immediately instructed to alert the neighbouring Ghograpar and Barana police stations and later all the police stations up to Guahati and to treat the case as S.R. case and on receipt of the FI issued supervisory note instructing that the S.R. case investigation be supervised by S.R. branch of S.P.'s office and its investigation to be personally supervised by the then Addl S.P.(HQ) Shri Bidyut Burhagohain personally marking a copy of his supervisory note to him. He also issued detail instructions to the I.O. through the O.C. to collect the registration number of the Tata Sumo alleged to have been used by the kidnappers from different districts and to flash the same to different districts for necessary action. Further instructions were similarly issued about the possibility of any link between the registration number given by some motor parts dealer to have been that of a scooter and to ascertain whether the policeman who came for kidnapping was a real or disguised miscreant, and whether any extremist demand for money or business rivalries were there and to raid their hideouts etc. He was transferred out of Nalbari in the last week of October 2000. as Commandant 7th A.P. Battalion at Kokrajhar. Police did not have any input as to any clandestine timber business being carried on in Kalita Timber Depot. To a question as to why Dibakar Dekka who admittedly came to the BOC Petrol Pump of Chanra Kalia and took diesel therefrom and tried to make a phone call from the nearby PCO sometime before the incident that evening why Shri Dibakar Dekka was not taken into custody for better investigation of the case, the S.P said that as Shri Dibakar Dekka was co-operating with the investigator of the case answering all relevant questions and in view of the experience that once a witness is taken into custody, he would not further co-operate with the investigation of the case and the fact that there was no direct allegation

against him, he was not arrested in the case. by the I.O, The S.P. however agreed that the PRCs who came with Shri Dibakar Deka should have been examined and their statement cross-checked with those of Dibakar Deka. To a question whether the police had the idea of some demand having been made by the ULFA or any extremist organisation, the S.P. said that there was no specific evidence to that effect and that his instructions in effect covered that aspect in the case. However to what extent that was carried out was not clear. Asked whether his failure to mention "SULFA" in his supervisory note meant that he eliminated the SULFA hypothesis altogether, the S.P said that his instruction No.11 mentioned extremists which included SULFA and that in fact some SULFA were examined by the I.O. The witness did not at all agree with the suggestion that the SULFA including Shri Dibakar Deka had a hand in the kidnapping and police knew it well and investigation was meant to be an eye wash and for protection of the SULFAs involved. The witness also denied that he thought that his duty was confined to acting on the evidence brought out by the I.O. and not to do anything more, and pointed out that his supervisory note showed his own thinking over the case and that he was also acting on the feed backs and suggesting measures on basis thereof. The S.P. could not rule out the possibility of the ransom demanders themselves having been the demanders of shares in the income of the Kalita Timber Depot and said that some of his instructions kept that in mind. Asked whether the fact that two persons alighted from the Tata Sumo and told an employee that "sir" wanted Manik Kalita to come to meet him, and Manik Kalita approached the Tata Sumo without any hesitation so that he could be dragged into the vehicle, did not indicate that there was earlier familiarity between them, the witness said that he did not know about Forest Department, but so far the Police officers of the District were concerned there were no such frequent visits to the Timber Depot so as to create such familiarity. However the assertion did not disclose any basis for the assertion. The S.P did not have any knowledge of any State Authority collecting funds through its instrumentalities during part of 1999 to 2001. .

and one entered the Timber Depot premises and asked an employee to inform Shri Manik Kalita that his "Sir" was waiting in the car, and hearing that Shri Manik Kalita without any hesitation went near the car and was kidnapped indicated that there were earlier such frequent visits, the S.P said that in so far as Police officers were concerned there were no such frequent visits, but he could not say about the Forest officials. The witness had no information of the State Authority having launched a fund collection drive during the second half of 1999 and 2001. The witness denied the suggestion that the modus operandi and other characteristics, including execution, it could have been a State plan executed through its instrumentalities including selected and trusted Sulfas.

This is one of the difficult cases from the point of view of identification of the persons involved. We have tested several hypotheses through cross-examination of witnesses, but none was found plausible, except that of some high-up demanding money from Manik Kalita so as to lead to his failure to meet and consequently his kidnapping/killing. In other words, this forms one of the series of coercive fund-collection drive cases under inquiry. The police-Sulfa nexus was evident, Smti Niva Kalita suspected Sulfas to have committed the crime. The Vehicle with the kidnapped Manik Kalita first went to the Nalbari side, perhaps to drop someone, then turned and proceeded towards Guwahati side, most probably to the Usha Court at R.G.Barua Road. The white Tata Sumo was most probably the same white Tata Sumo, which Geetanagar

O.C. Shri Mani Saikia saw him driving. Saikia's statement that Dibakar Deka was changing his vehicles was a guarding statement. That Dibakar Deka went to Nalbari on the fateful afternoon was admitted by Dibakar Deka, that he went to Pathsala was self-exculpatory for him and may be rejected. That he returned at 11 P.M. same day was also admitted. Dibakar Deka's association with the Usha Court was a recorded truth. The Geetanagar O.C. also said that he was the complainant in the Usha Court R.P.G. attack case. The Commission happened to see the record of that case in another matter. There he stated that he was a resident of the Usha Court. This case was subsequent to that, but there was no evidence of his changing his residence. It is a fact that Dibakar Deka was called and examined through the Geetanagar O.C. in this case. Even if he ceased to be an inmate of the Usha Court, that would not ipso facto mean his cutting off all connection with the Usha Court. The C.D. shows that there was instruction to examine some Sulfas of Nalbari Police Reserve, but there is no record of such examination. This might be because of the protection and guarantee of innocence and good behaviour of that Sulfa camp inmates by Nalbari police authorities. The I.O. is recorded to have first gone for examination of Nalbari camp Sulfas. Their protective cell could not be penetrated.

On the basis of the above evidence the identity of the perpetrators and the accomplices may reasonably be limited to Sulfas Shri Dibakar Deka and such other Nalbari Police Reserve and Guwahati Sulfas, as accompanied Dibakar Deka in his white Tata Sumo in the act of kidnapping. The man in Khaki with a short rifle, and one in civil dress, who alighted from the white Tata Sumo near the saw mill and one told Manik Kalita that his sir was waiting in the car, may have been of Police-Sulfa nexus. Identification will also include all the then Nalbari District police officers as were connected with the investigation of the case, including the O.C. and the I.O. who, in effect, may be proved to have, excited, helped and/or facilitated the commission of the kidnapping/killing.

This case deserves to be revived and re-investigated.

(C) Whether there was any conspiracy in targeting Manik Kalita and the motive behind such kidnapping/killing.

This term is replied in Parts 1. Conspiracy in targeting, and 2. Motive behind the killing.

1. Conspiracy in Targeting the Victim. Conspiracy in the context of the instant inquiry, will mean criminal conspiracy which is defined in Section 126A of IPC as follows:

"When two or more persons agree to do or cause to be done-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code.

"A person abets the doing of a thing, who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation.1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the First report and the same is referred to...The question whether there was any conspiracy or not in the kidnapping/killing of Shri Manik Kalita has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that the family members of Shri Manik Kalita knew that the Sulfas of Guwahati demanded commissions on his submission of tenders for various works and there were demands from them which he was unable to meet. During that time there had also been instances of such demands being made from top Government levels..That may have created some disharmony which culminated in the taking him away. The persons who participated in the act of actual kidnapping on the fateful night, must have been the same or their agents and accomplices and as such, there could be no other answer than that there was criminal conspiracy in the kidnapping/killing of Shri Manik Kalita. There is evidence to show that the SULFAs were enjoying protection from the Nalbari police. This may have disabled them from taking the right action against the concerned Sulfas in this case. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an Extra-Constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in secrecy, this circumstantial evidence will be relevant and admissible. In the kidnapping/killing of Shri Manik Kalita, there were 5/6 persons in the act of killing, but there was a course of conduct involving the deciding of the course of action culminating in the kidnapping/killing..Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of kidnapping/killing show that there must also have been some authoritative institutional assurance of safety to the kidnappers/killers after the act was completed. Therefore, it is held that in this case there was conspiracy of the worst kind, being among the protectors against the victims they were bound to protect under the law.

II. Motive behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of P.W 1 Smti Neeva Kalita who deposed that the Sulfas troubled her husband in submitting tenders for works at Guwahati, and she thought that those Sulfas could have kidnapped her husband. and there

could be no other reason for kidnapping/killing of her husband Shri Manik Kalita. This statement was not challenged in cross-examination.. Therefore, there could be no doubt about their having been a part of the conspiracy. We have already noticed that from the middle of 1999, there had been a coercive fund collection drive from the apex of the Government and those who failed to subscribe were being kidnapped or otherwise killed. .

A course of conduct by different Government agencies towards similar collection began.

The modus operandi, the way in which, and the personnel by whom Manik Kalita has been kidnapped/killed leaves no doubt that the killers enjoyed complete immunity for their acts of kidnapping/killing. The way in which in this case, as in all other cases, under inquiry were made to fizzle out and the F.R.s (Final Reports) were submitted shows that the police has been in collaboration with the kidnappers/killers. All these also prove that the entire scheme was being remote- orchestrated from the top of the department. Those in helm of the Departments may be held accountable and need be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond any doubt. . The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the kidnappers/killers. The desire of a consequence is the motive for an action. Intention and motive are often used synonymously. The motive was the perpetuation of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty with dangerous propensity. In Criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as- a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it..

(D) Pinpointing responsibility on persons involved directly or indirectly in killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The Best Evidence Rule. "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that "the best evidence must be given of which the nature of the case permits." has often been regarded as expressing the greatest Roman Normalat fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the

maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, "In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court".

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this group of seven cases is therefore is relevant and admissible,

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of all the earlier cases are found in this case while answering its terms of reference so as to justify a finding of a plan of 'coercive collection of funds through instrumentalities of the State and some trusted Sulfas. :

1. That this killing involved an business family, being that of Shri Manik Ch. Kalita
2. Unlike in other cases, this kidnapping/killing, of Maanil Kalita, was committed in the evening light.
- 3.. Two assailants one in khaki with a short rifle the other i civil dress lured Manik Kalita into a waiting Tata Sumo and sped away first towards Nalbari, then towards Guwahati.
4. The weapon used in killing was a short police military rifle of prohibited bore, generally found in police-military situations
5. The firearm of prohibited bore, was never recovered or forensically examined..
6. The vehicle used was reportedly a white Tata Sumo which was never seized .
7. There was no police patrolling in the crime areas.at the time of kidnapping.
8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the kidnapping/killing, some of the latter being constituted into an Extra-Constitutional Authority and used as the executioners.the modus operandii being to visit the Mill premises, lure the victim to a parked vehicle and speed away. The victim has not been seen or heard of since then by those who would naturally have heard of him, if alive.
9. There was general resentment and decry against the Unified Command Structure/ then Chief Minister..
10. Therewas connivance of SULFA;and omission to accuse any SULFA despite clues...
11. The investigation did not commensurate with the seriousness of the crime perpetrated..
12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
13. No condolence message was sent from then Govt. of Assam to the victim family.
14. No ex-gratia/compensatory payment was made by the Govt. of Assam.in this case.
- 15 In this case (perhaps)death penalty has been imposed for mill owning "status. .
- 16 That in all the cases, this case of Manik Kalita was also remote orchestrated by State. though Police-SULFA nexus using some Sulfas as the striking arms or executioners. The authority may be held liable and be dealt with according to law...

On the basis of the above evidence, the responsibility for being involved directly or indirectly, in the kidnapping/killing of Shri Manik Ch Kalita may reasonably be pinpointed on Sulfas Shri Dibakar Deka and such other Nalbari Police Reserve and Guwahati Sulfas, as accompanied Dibakar Deka in his white Tata Sumo, in the act of kidnapping., and on the Police-Sulfa nexus, and on all the then Nalbari District police officers, as were connected with the investigation of the case, including the O.C. and the I.O. who, in effect, may be proved to have, excited, helped and/or facilitated the commission of the kidnapping/killing. ..

(E) Recommendations to prevent recurrence of such kidnappings/killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such kidnappings/killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure, which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/requisition by the State Govt. The Structure itself envisages its review after every three months; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State, being considered inadequate, the armed forces and para-military forces were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. The same was the case of successful performance of the National Games with creditable applause. This may be an appropriate time for effective talks with the local outfits to observe cease fire, first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed for restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

. The Army Districts. In para 15 we discussed the structure and functioning of the Unified Command Structure. In course of the Commission's hearing sessions in the Upper Assam district of Sivasagar it was learnt that the Upper Assam districts of Tinsukia, Dibrugarh, Dhemaji, North Lakhimpur and Sivasagar have been declared as Army districts and that, as a result, Army has been operating in those districts. In so far as the declaration is concerned, this Commission has nothing to do. As the Commission has to enquire into some criminal cases of some of those Upper Assam districts, the Commission has to see whether this declaration had any impact on those cases. The Commission proceeds on the basis that during the period from 1998 to 2001 also similar

declaration could have been there in those districts, and the Unified Command Structure and the Armed Forces Special Powers Act were necessarily in operation in those districts. If that was so, what were the functions and powers of the Army thereunder would be relevant in the context of prevention of such killings. We have already discussed this, including the leading case, in para 15. The Armed Forces (Assam and Manipur) Special Powers Act, 1958 was amended by the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972; and it is now The Armed Forces in the State of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram Special Powers Act, and it is extended to all these North Eastern States. By section 4 of the Amendment Act 1972, section 3 of the principal Act stands substituted, namely,

“3. If in relation to any State or Union Territory to which this Act extends, the Government of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area.”

The Armed Forces Special Powers Act does not enable the Armed forces to supplant or act as substitute for civil power after a declaration has been made under section 3 of the Act. The power conferred under Clause (a) of section 4 of the Act can be exercised only where any person is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or firearms; ammunitions or explosive substances. In other words, the said power is conditional upon the existence of a prohibitory order issued under a law, e.g. under the Cr.P.C. or the Arms Act, 1959. Such prohibitory orders can be issued only by the civil authorities of the State. In the absence of such a prohibitory order, the power conferred under clause (a) of section 4 cannot be exercised. Similarly, under section 5 of the Act, there is a requirement that any person who is arrested and taken into custody exercise of the power conferred by the clause (c) of section 4 of the Act shall be made over to the Officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

Maintenance of public order involves cognizance of offences, search, seizure and arrests followed by registration of reports of offences (F.I.R.s), investigation, prosecution, trial, and in the event of conviction execution of sentences. The power conferred under the Act only provide for cognition of offence, search, seizure and arrest and destruction of arms dumps and shelters and structures used in training camps or as hide-outs for armed gangs. The other functions have to be attended to by the criminal justice machinery. Thus, the functions in aid of civil power have been ruled by law and not by discretion. The deployment of the Armed forces of the Union in a State does not in any way deprive the people of the disturbed area of the State of their fundamental rights to life and liberty. Any violation of such rights under such provisions would not countenance violation of Constitutional and human rights of the people by the Forces

deployed in aid of civil power, nor would it prevent fake encounters from being murders, or a crime from being a crime, punishable under the law.

Throughout evidence the official witnesses say that they kill the boys in self defence. The idea varies, and some seem to be of the view that Ulfas are to be shot at sight. Fake encounters are often reported in news papers. Almost always some obsolete weapons/ammunitins and/or some Ulfa related papers are put near the dead bodies.obviously for post mortem justification of the killings This will not stand on the way of the spade being called a spade...

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country, The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386."That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)";420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda** , meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail* and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner..While no training course will

be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge..

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea, their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, but using their services as "guides, "spotters", trouble-shooters and cllaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the Insolvency principle is not applicable to criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the citizens was effected, and by those whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favoue in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gracia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packagew, and offer in appropriate

cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning patriarch of the family has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to Smti Niva Kalita, wife of the victim Shri Manik Ch, Kalita, for the benefit of the family, a sum of Rs 5,00,000/- (Rupees five lakh only) forthwith.. More than six years have already elapsed and it brooks no further delay..



(35)

SHRI PRATAP KALITA KILLING CASE

Rangia P.S. Case No. 273 /2000

Date of occurrence. 3.12. 2000

By the Commission's order dated 22.12.2006, on application dated 30.11.2006 submitted by Smti Bimala Kalita, widow of the deceased, Pratap Kalita, by virtue of the authority conferred on it by the Government of Assam's Notification Nos. No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification. No.PLA 331/2005/1 dated 22.8.2995, as the case was found to have been within its terms of reference, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry, with notice to the State Government.. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference, and any other related and relevant matters with recommendations, if any, namely:

- “(a) Circumstances, in each case, leading to the killing of its victim(s).
- (b) Identity of the killer(s) and accomplice(s), if any.. ..
- (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such..killing(s).....
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
- (e)To make recommendations to prevent recurrence of such killing(s)
- (f) Any other matter related to or relevant to the purpose of this inquiry;”

(A) Circumstances leading to the killing of Shri Pratap Kalita

The applicant Smti. Bimala Kalita in her application to the Commission states that in 1994 her son Shri Khagen Kalita disappeared from their house and since then they had no contact with him. Later from police they learnt that he joined the ULFA. Polic has

been frequenting their house in search of him. On 2.12.2000, Saturday, the O.C. of Rangia P.S., the then S.D.P.O. and The S.P. Kamrup came to their house in the evening and enquired about Khagen Kalita and gave a beating to her husband and threatened to finish all of their family. Before leaving, they told her husband that if he failed to bring back Khagen within 24 hours, they would shoot down Khagen's father, i.e., her husband. Next day, i.e., 3.12.2000, Sunday, night, at about 12 midnight, about 15/20 of the policemen, who came the previous day, covering their faces with black cloths, arms in hand, appeared at their house and forcibly took away her husband refusing to hear the prayers of the inmates not to do so. Two police officers did not have black cloths on their faces, and she would be able to identify them if produced. On 4.12.2000, Monday, they went to Rangia Police Station in search of her husband, but was not found. However, that very morning at about 8 A.M. a dead body was brought to the Police Station, and that was recognised as the dead body of her husband. Two bullet injuries were found on the dead body. The police killed her husband in a planned manner. . .

The Post- Mortem Report shows the following injuries.

Male body average built, dressed in a Jangia and a Garmocha, one ganzee, full sweater and shirt are having bullet injury marks corresponding injuries on body, eyes partly open, mouth closed Body looks pale Rigormortis present all over the body.

(1) Entry wound of bullet with irregular inverted margins surrounded by abrasion color 1.8 cm diameter into chest cavity deep into deep on front of chest 5 cms below right sterno crevicular joint and 4 cms right to midline.

(2) Bullet exit wound with lacerated everted margins 3 cm x 2 cm size on back at 15 cm below 7th cervical spine and 3.5 cm right to midline.

(3) Bullet entry wound 1.8 cm in diameter x chest cavity deep on front of chest 4 cms below left cleivcle and 8 cms left to midline.

(4) Bullet wound with lacerated and everted margins 2 cm x 1.5 cms size 2 cms inner to lower angle of left scapula.

(5) Bullet entry wound 0.8 cm x into skull cavity deep at 4 cms above the right ear Bullet entered into the base of skull and could not be recovered during post mortem examination.

According to the doctor, death was instantaneous resulting from bullet injuries of head and chest which were antemortem and caused by rifled weapon and Homicidal in nature. Time since death 12 to 18 hrs (Approx) dated. 24TH January, 2002.

H.W.V. Cox in his Medical Jurisprudence and Toxicology, 7th ed. vii wrote:

The modern nitro-cellulose type propellants that are now far more commonly encountered. Medico-legal questions in relation to firearm injuries. The kind of firearm used is determined by the size, shape and the composition of the bullet. The examination of the cartridges that are used. A modern criminalistics laboratory with all the modern imaging facilities is a pre-requisite in modern investigations. Infra-red photography for examination of the clothing is a pre-requisite now a days. The furniture and fixtures and the position of the weapons and the posture of the injured at the time of firing have to be considered. The victim's posture may have changed during the killing. In a rifled weapon wound the entrance wound is usually inverted and the exit wound is everted. However, the entrance wound may be everted if it is a close discharge, and the

exit wound may not be everted, if there is firm support of the skin.. Th calibre of a rifled weapon cannot certainly be deduced from inspection of the entrance wound. The most important differentiation is between those caused by smooth bored from those caused by rifled weapons. Contact and vry close discharges produce burns, very close blackening of powder or oil and powder tatooing whre black powders are used, of course not so much with smokeless propellants.

The case records show that V/iv-NHRC MISC 192/2276 Dt. 26.4 National Human Rights Commission New Delhi had sought for present status of Rangia P.S. case No 293/2000 u/s. 364/302 IPC r/w S, 27 Arms Act, to the office of S.P. and there was an order to furnish within 2 days for onward transmission.

There is also mention of some recovery of arms and ammunition from the place of occurrence and that those were sent to the 4 APBN Kahilipara. Articles mentionrf:

(!)4(four) Nos of factorymade 7.62x39mm fired cartridge cases numbered Exht A - Result of examination: Exht- A. Factory made fired ernpty cartridges cases under the Arms Act. Exht -A year of manufacture -81 Report signed by Armourer 4th A.P. Battalion, Kahilipara on 3.2.2002.

It appears all the pages of investigation have been in the handwriting of the same person. The police version appears to be that because of the bad deeds of the ULFA son Khagen Kalita, some other ULFA group had killed Pratap Kalita, which is palpably a concoction.

It is not convincing that in the morning of 4.12.2000 when Pratap's family members went to Rangia P.S. and asked what police did with Pratap Kalita, they did not tell them anything until they themselves recognised the dead body. Even then, they did not record any statement of those persons even to know as to how he happened to be there where his dead body was found. This shows that Police itself placed the dead body there.

(B) Identity of the killer(s) and accomplice(s), if any.

. It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea or negligence*. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous.. We discussed the meaning of "secret". in para 7 of the Introductory Part I. Identification of the killers has to proceed on the basis of investigation and evidence. wherefrom, in this case, two shortcomings appear from records, namely, that only routine investigation proceeded; modern methods were not used; police dogs were not engaged. to sniff out the culprits; foot or finger prints were not taken. Investigation was perfunctory, as important evidence were not taken promptly or not at all There was also inexcusable delay in sending the records of the case to the Commission..

A certified copy of the Rangia P.S. G.D. Entry No. '83 dated 4.12.2000 at 7 A.M shows that one Mainuddin Ahmed, son of Mafizuddin Ahmed, telephonically informed the

Police Station that a dead body of an unknown person was lying by the side of the National Highway near Chattasil Village. Recorded as directed by S.I Shri B.C. Borah for necessary action..Certified copies of the subsequent G.D. Entries up to No.105 showed the consecutive steps taken by Rangia P.S. in the matter, namely SI B.C. Bora with staff proceeded to the place of occurrence, at 7.05 A.M, at 7.10 A.M. Inspector O.C. and A.S.I. Shri S. Mazumdar arrived at the P.O.,at 8.55 A.M. steps taken for sending the dead body of Shri Pratap Kalita to GMCH for post mortem examination at 9 A.M. At 10.30 the Addl S.P.(HQ) and S.D.P.O. Rangia arrived P.O.at 10.40 A.M. Shri Babul Ch Bora proceeded to Udiana Bala Village...At 11 A.M. the Rangia P.S. Case No.273/2000 was registered..The Addl S.P.(HQ) and S.D.P.O. Rangia came to P.S. At 2 P.M. the I.O returned to P.S. after investigation., However, there are some discrepancies with the times mentioned in depositions of the officers., which are not material.

P.W. 1 Smti Bimala Kalita deposed that her son Shri Khagen Kalita left her house in 1994 and as police and army frequented her house in search of her son Khagen Kalita, she knew that he joined the ULFA organisation. Police and army continued to frequent their house ever since, enquiring his whereabouts and asking them to bring back their son Khagen Kalita and make him surrender, but they had no contact with him as he never came to his house ever since. On 2.12.2000 the S.D.P.O, Rangia Subdivision, along with many policemen, came to their house and accused them of having received money from their son Khagen, who, they said, came home to give the money. The parents denied that Khagen Kalita came home or that he gave money. Enraged, the S.D.P.O. ordered them to produce their son Khagen Kalita next day and said that consequences of their failure to do so would not be good. Alas, on 3.12.2000 at about 12 midnight the S.D.P.O, with his party, arrived at their house and ordered to open the door. Witness Smti Bimala Kalita heard and recognised the voice of the S.D.P.O. and opening the door they dimly saw the S.D.P.O. with a large group of red cap policemen, some of them covering their faces with black cloths. She could not see the S.D.P.O. clearly, as police did not allow them to switch on the light, but she recognised his voice. They then lifted her husband from his bed and dragged him out of the house to their vehicle parked outside the gate and sped away. Next morning the witness, her son-in-law and other relatives went to the Rangia P.S. and enquired where Shri Pratap Kalita, whom police brought during the night, was, and Police said that they did not bring Pratap Kalita, and meanwhile a police vehicle brought a dead body to the police station and being asked the witness and her men recognised it to be the dead body of Shri Pratap Kalita. The witness came home in severe grief and the police took the dead body for post-mortem examination and later took it to their house and delivered it; and then it was cremated. Smti Bimala Kalita said that the S.D.P.O. Rangia was responsible for the killing of her husband Shri Pratap Kalita, and the reason was that her son Khagen Kalita was in the ULFA; and that even thereafter the army and police continue to frequent their house. In cross-examination Smti Bimala Kalita said that the S.D.P.O. questioned them, but he did not understand Assamese and one red cap had to explain to him and that the police used torches and in the light they could see the police party. Police said that they found the dead body at Morajan road side near a bridge. No ejahar was lodged on this killing..

P.W. Shri Naren Kalita, elder brother of Pratap Kalita, by profession a retired Railway employee deposed that he was in the group that went to Rangia P.S. in the morning of 4.3.2000 to enquire about Pratap Kalita. and a two starred police officer told

them that they did not bring him previous night; and when they were taking tea in a nearby stall, they saw a vehicle driven by a private driver brought a dead body in it, and on examination they identified it to be that of Pratap Kalita, with two bullet injuries, one below the neck and the other little below it on the back:and without taking it out of the vehicle, police sent it for post-mortem examination at the Guwahati Medical College hospital, whereafter it was handed over to the relatives Naren Kalita in his deposition did not mention anything about his lodging any FIR which is shown to have been lodged at 6 P.M., may be by that time the post-mortem was over and the body handed over to the relatives. In his deposition Naren Kalita clearly said that he as in the group that went to Rangia P.S. in search of Pratap Kalita who was picked up from his bed previous midnight. This indicated that the FIR was a contrivance at the instance of the police. He corroborated that police and army frequented their house even thereafter in search of Shri Khagen Kalita.

It is noteworthy that the police version begins with the information received from Md. Moinuddin at about 7.30 AM on 4.12.2000 that an unidentified dead body was lying at Chattashil village by the side of the National Highway No. 31, while the Pratap Kalita's family version apart from earlier frequent operations in the family, begins from the night of 2.12.2000 when the police including the S.D.P.O came and asked the family to produce their son ULFA Khagen Kalita, else the consequences would be serious. Accordingly the Police came at midnight of 3.12.2000 and not finding Khagen Kalita took away Pratap Kalita awakening him from his bed.

N.W. Shri L.R Bisnoi was the then S.P. Kamrup district and he came to know about this case on 4.12.2000 afternoon from the then Addl S.P. (HQ) Kamrup who was the crime officer of the district. He categorically said that at the same time he also came to know that the dead body found was of none else than the father of ULFA Shri Khagen Kalita. Yet when asked that why they did not examine the members of that house and why that hypothesis was not pursued at all in investigation, the reply was that the FIR lodged in the case did not mention at all the story now stated by Smti Bimala Kalita and Shri Naren Kalita before the Commission. Even if it was so, the I.O. should have at least enquire as to how and why Pratap Kalita could have been at the place where his dead body was found. In fact no witness was examined on this hypothesis, On the other hand there had been persistent efforts to make the reported case as the final one and all witnesses examined were on that line. However the facts were, believing the story of Smti Bimala Kalita and Shri Naren Kalita who was a retired railway gangman, were that on 12 midnight of 2.12.2000 Pratap Kalita was at his home and there was no dispute about that. Till midnight of 3.12.2000 Pratap Kalita was at his home until he was taken away by the party composed mainly of Police officers and men and some people covering their faces with black cloth. They were all armed with deadly weapons. Openly they announced that the punishment of being taken away was the result of failure of Pratap Kalita was for his failure to produce his son Khagen Kalita as was ordered the previous night. The police party was, therefore, last seen together with Pratap Kalita. During the remaining couple of night hours all that happened..

Md. Moinuddin, N/W. 5 deposed that he got up on the morning of 3.2.2000 as a number of villagers came to him and woke him up and informed that at about 200/300 meters from their house, one unidentified dead body was lying there and requested him to

telephone, and he telephoned to the Rangia P.S. which was received by an officer of Rangia P.S. who asked him how he came to know about it, and where the body was lying. He did not immediately go to see the dead body, but when he was going out to his work, he had a peep at the dead body. He was called to the Rangia P.S. and was asked several questions about how and when he came to know about the dead body. However he was not required to sign any paper. Asked in cross examination as to in what state the dead body was lying, Moinuddin said that the villagers told him that as they were coming from the Namaj they saw the dead body lying there on its belly face downwards. The place would be about 7 kms from the Rangia P.S. He telephoned to Rangia P.S. at about 8 A.M. At the police station people told him that the man was father of an ULFA boy and was blind of one eye. The people also told him that the man was killed by secret killers. While having a peep, he did not see the dead body as it was already wrapped in a mat, and he did not see any blood stain at the place Pratap Kalita's Udiana village of Pratap Kalita would be about 9 kms from his Sattrasil Village of Moranjana would be about 9 kms. both by the side of the same National Highway 31. There was a village defence party patrolling there that night. To come from Pratap Kalita's Udiana Bala village, one has to come towards Guwahati and by national Highway to Rangia, and by the same National Highway 31 to Moranjan/Sattasil village..

N.W. 6, Shri Binod Kumar was the then S.D.P.O, Rangia Subdivision of Kamrup District residing in a rented House at Rangia, used partly as residence and partly as office. On 3.12.2000 morning the O.C. Rangia P.S. Shri A. Rahman telephonically informed that an unknown dead body was lying by the side of National Highway No.31, and he advised the O.C. to immediately inform Police Control room to alert all the Police Stations and outpost of the District, and to proceed immediately to the place of occurrence whereto he was also proceeding with his P.S.O. On his arrival there, at about 6/6,30 A.M., he found the O.C. Shri A. Rahman and S.I. Shri Babul Bora already there, and he asked them to search the place to find out if some empty cartridges and bullets were there, By that time a gathering of local people were already there and he asked those people if they heard any sound of the incident at night, but they denied having heard anything of the kind. The place was not allowed to be disturbed, He instructed the O.C. to take the dead body to Rangia P.S., about 6/7 kms away, whereto he also proceeded ahead..

and at the P.S. lot of people gathered, and he was told, that family members of the deceased also arrived. The inquest was done either at the place of the dead body or at the P.S., but definitely before it was sent to the GMCH for post-mortem.. The Addl, S.P.(HQ) also arrived and with him the S.D.P.O. went to some villages to enquire if the villagers knew anything about the incident during the night, but none could give any information about the incident. While the Addl S.P.(HQ) supervised the investigation of the case he was in touch with the investigation process and asked his subordinates to proceed carefully with it. He learnt at the P.S. that an FIR was lodged by one relative at the P.S. He joined as S.D.P.O. in August 2000 and was transferred out in August 2001. The name of Khagen Kalita, son of Pratap Kalita was in the ULFA list of Rangia P.S. The S.D.P.O. Shri Binod Kumar visited Khagen Kalita's house number of times before the incident and met his parents. He also advised them to bring Khagen Kalita back to the main stream after surrender, and also forewarned them that the consequence of their failure to bring back would not be good for the family. Shri Binod Kumar S.D.P.O. Rangia also said that the parents of Khagen Kalita expressed their inability to do so, saying that they had no

contact at all with their ULFA son. The police practice was to search the house when there was prior information that the ULFA visited his house, when there was no such information, they would simply visit the house and take information, and that was a part of their duty. He did not remember whether he visited Shri Pratap Kalita's house on 2.12.2000. He did not meet the person named Moinuddin Ahmed. He did not ask the I.O. to examine Moinuddin Ahmed, as, he said, the case was supervised by the Addl. S.P.(HQ). While visiting Pratap Kalita's house, he had occasion to talk to his wife Smti Bimala Kalita. He explained that when they frequented their house as part of their duty, they met and talked to both the parents of Khagen Kalita and gave same advice to both of them. He did not know that the wife's name was Smti Bimala Kalita, which he learnt from her depositions, copy being furnished to him. He had also gone through the application (in Assamese) filed by Smti Bimala Kalita before this Commission, but has not "fully understood the contents" According to the S.D.P.O. Shri Binod Kumar, the deposition of Smti Bimala Kalita "that in the night of 2.12.2000, the S.D.P.O. Rangia with the S.P. Kamrup and the O.C. Rangia came to their house and told them that unless they produce their son Khagen Kalita within 24 hours, Khagen's father, namely Pratap Kalita will be shot dead", was totally false. So also, according to him, the deposition of Smti Bimala Kalita "that on 3.12.2000 also the S.D.P.O. led the party and he took away Khagen Kalita's father Pratap Kalita" was totally false and he denied it. He could not comment on whether there was any specific reason for Smti Bimala Kalita to have harboured malice against him or for having made this allegation against him. The S.D.P.O. pointed out that there were several discrepancies between Bimala Kalita's application and her deposition. In her application she said on 2.12.2000 a Saturday, the S.P. Kamrup, the S.D.P.O. Rangia and the O.C. Rangia visited her house, while in deposition she said the O.C. did not come that day. In her deposition she said the S.D.P.O. was Hindi speaking, while he knew and could speak Assamese, and there was no need for things to be explained to him. He suggested that the hope for compensation could have been the motive for preparing the case which was not made out earlier. Asked how was it that during the period from 1998 to 2001 there had been a series of similar cases of killing the ULFA families or relative all with the same modus operandi as in this case, Shri Binod Kumar replied that as he was not the I.O. or the Supervisory officer of this case he was unable to answer the question, of this case. His impression was that the man was killed elsewhere and the dead body was thrown there....

Pratap Kalita was dead, and there was the happening that Md Moinuddin was reported to; by the villagers who saw the dead body lying by the side of the National Highway No.31 at about 4.30 P.M., saw the dead body lying on the National highway at the village. Then came the reporting, by Md, Moinuddin at about 8 A.M. same morning. So virtually there was no missing link at all. Added to that is the fact of the investigating officer meticulously avoiding examination of co-villagers of Pratap Kalita. The S.P.'s explanation is that all these were not stated in the FIR lodged by Shri Naren Kalita. Firstly, if what has been alleged was correct, there was hardly any scope for lodging FIR to the same police. Secondly, Naren Kalita was an illiterate retired Railway gangman and who wrote the FIR has to be ascertained. Thirdly, the whole C.D. is in the handwriting of the same person and lastly, there had been enormous delay in furnishing the skeleton C.D. to this Commission, without any reasonable explanation. Again the idea behind finding the empty fired cartridges of factory made A.K.47 rifles is not clear. To whom those were

meant to be attributed? How could those be from another hostile group of ULFA? How could such a group overtake Pratap Kalita from the police themselves? No description of any such group was available. What could the 4 APBN report on it? The first seers did not report it to Moinuddin who also did not see anything of the kind when he had a peep while coming from home.

The FIR lodged by Shri Naren Kalita was palpably at the instance of the Police. This is because of the fact that he combined in it both the episodes, namely, that which was stated by Smti Bimala Kalita earlier, and also that of Moinuddin Ahmed, by saying that the kidnapping at midnight and finding of the dead body at Chhtasil village by the side of the National Highway at Moranjan.. Shri Naren Kalita was illiterate and his supposed statement at 6 P.M. on 4.12.2000 u/s 161 Cr.P.C. was to be unsigned. Hence, both are subject to reasonable doubts. This FIR was submitted at 11 A.M and his examination at 6 P.M. on 4.12.2000, that is, after the dead body was brought after post-mortem examination. Again, it was not correct that the earlier part was not mentioned therein. It was mentioned, but not in a definite way. The startling facts that Smti Bimala Kalita, widow of Pratap Kalita and the telephonic informer Moinuddin were not examined at all, were indicative of the police knowing the entire story themselves. The fact that there were no blood stains at the spot where the dead body was lying proved that the man was not killed by bullet at that spot but was so killed elsewhere and the body dumped there. This was also the impression of the S.D.P.O. Shri Binod Kumar himself. It was also in evidence that the two light vehicles were seen proceeding towards Rangia, and that Moranjan fell on the way to Rangia P.S. on the national Highway No 31. The modus operandi of the case is also similar to all other killing cases in under inquiry.. The Chattasil people who reported to Moinuddin about the dead body also thought that the man was killed by secret killers. So thought Moinuddin himself. Pratap Kalita was blind of one eye and lame in one leg. Remote orchestration was obvious..

N.W. Shri Babul Chandra Bora was an S.I in Rangia P.S. on 3.12 2000 and at about 7 A.M. on 4.12.2000 the then O.C. of Rangia P.S. Staur Rahman informed him that an unidentified dead body was lying by the National Highway No. 37 at Moranjan and he had to take necessary steps; and immediately he proceeded to Moranjan and taking a section of ASRF with him. Arriving there at about 7.15 A.M. he found lot of people and tried to guard the place of occurrence, found 4 Nos of empty cartridges of A.K. 47 rifles and seizure-listed those cartridges and interrogated some of the persons from the assemblage. Mean while the O.C. arrived and had consultations; the S.D.P.O. Rangia Shri Shri Binod Kumar, and the Addl S.P.(HQ) Kamrup Shri Bibekananda Das having arrived Shri Bora performed inquest over the dead body in presence of his superior officers and arranged to send it to Rangia P.S. for being sent for post-mortem examination. on a police van. (As the relatives of Pratap Kalita were already at Rangia P.S. enquiring about him), the dead body was identified to have been that of Shri Pratap Kalita, by his elder brother Shri Naren Kalita, who was said to have lodged an FIR whereupon the case was registered. and Shri Bora was made its I.O, accompanied to Guwahati Medical College (and on his return) he was examined at 6 P.M. (Ejhar shows 11 A.M.) at Rangia P.S. The I.O. receiving the FIR which said that a number of persons came at night in two light vehicles to Shri Pratap Kalita's house and forcibly took him away. Time was not mentioned. As directed by his superiors, the I.O. proceeded to Pratap Kalita's place, but not finding anyone at his house, interrogated some persons u/s 161 Cr.P.C., and thereafter

proceeded to Jayabtipur and Pitamborhat and Gopalpur, all neighbouring villages of Bajali interrogated some more persons, but without any positive result. Returning to Rangia P.S. he alerted all the police stations and outposts of the State and also visited some neighbouring police stations and also informed the Army column locate at Rangia.. He consulted his superior offices like the O.C, the S.D.P.O. Rangia and the S.P Shri L.R.Bisnoi, who was said to have supervised the investigation of the case. However, the blatant lacunae was the non-examination of the informant Moinuddin Ahmed who reported about the dead body, and Smti Bimala Kalita, wife of Pratap Kalita, the crucial person in this case. The reason must have been known to the hierarchy. The O.C. having been transferred the successor Inspector O.C. on consultation suggested the case to be returned in F.R. The I.O. even could not say whether there was at all any real person with that name, though he said that his house was at Chattasil village about a k.m. from the place of the dead body. All the people he examined near the dead body said that while passing by the national highway they saw the dead body. I.O. did not see any trail of blood on the ground around the dead body. The I.O. agreed that the FIR submitted by Naren Kalita on 4.12.2000 conformed to the G.D. entry No. 83 also dated 4.12.2000. In view of the statement by witnesses that the two light vehicles, after taking in Pratap Kalita, sped away towards Rangia P.S., the I.O., when asked, admitted that Moranjan, the place where the dead body was found, was by the side of the same National Highway No. 37 going to Rangia P.S. In other words, Moranjan fell between Pratap Kalita's house and the Rangia P.S. It also in evidence that there were no houses around the place where the dead body was found, so that throwing out the dead body at that lonely place during the night was not impossible. The 4 empty cartridges of A.K. 47 rifles were sent to the Armourer of the 4th A.P.B.N, Kahilipara and not to Forensic Science Laboratory, and that too only on 14.11.2001, i.e., nearly a year after the incident.; and the report was that those were factory made in 198; and the report was received on 1.6.2002. Explanation was that the I.O. was busy with other duties, including election duty. The I.O., when confronted, said that his Note dated 21.11.2001 at page 49 of the C.D. suggesting that the killing could have been by someone enraged by some action of ULFA Shri Khagen Kalita who was son of Pratap Kalita, was on the basis of the unsigned statement of one Tamizuddin Ahmed examined u/s. 161 Cr.P.C. He also admitted that there had been no such complaint or case on the records of Rangia P.S.. The empty cartridges were scattered around the dead body, and had no blood stains. The I.O. admitted that at least once he visited the house of Shri Pratap Kalita in search of Shri Khagen Kalita and persuaded the family to bring him back to the main stream, and told them that the consequences of their failure to do so would not be good for them. The I.O. agreed with the suggestion that the person was killed elsewhere and the body was placed there. He however denied the suggestions that the entire investigation was planned and designed by police who were involved in killing of Shri Pratap Kalita in the wee hours of 4,12,2000, after he was picked up by Rangia Police including the S.D.P.O. Rangis, after midnight of 3.12.2000, from his house, and the investigation was a mere eye-wash..

N.W. 4 Shri Bibekananda das was the Addl S.P.(HQ) Kamrup and on 4.12.2000 at about 7.15/30 A.M. he received a telephonic information from Rangia P.S. that an unidentified dead body was lying by the side of National Highway 37 near Moranjan Saptasil village. Arriving soon at that place he found the O.C. and the S.D.P.O. already arrived there and learnt that the dead body was already identified to be that of Pratap

Kalita of Udian village and that he was forcibly taken away from his house that night. There is a palpable clue here, According to evidence of the P.W.s Pratap Kalita's dead body was identified only when the dead body was taken by police from Moranjan to Rangia P.S. where the relatives were in search of Pratap Kalita, who were told by police that Pratap Kalita was not brought by police that midnight. How could then it be known at Moranjan itself when Addl. S.P. arrived there ? . From Moranjan the Addl. S.P., the S.D.P.O., the O.C. and Shri Babul Bora proceeded to Udiana village and examined some witnesses there other than the family members of Peatap Kalita who were not there, having gone to Rangia P.S. They discussed the case there and entrusted its investigation to S.I Shri Babul Bora, and left Udiana village at about 10.30 A.M. and arrived Rangia P.S. where the case was discussed GMCH; and he left Rangia P.S. and arrived at his Headquarters at Guahati by about 1 p.m. . and some instructions issued and the FIR was lodged at about 11.30 A.M., and he informed the S.P about the case, The dead body was then sent for post-mortem examination at

When the Addl S.P.(HQ) arrived Sattasil, Moranjan he saw the dead body but no blood trails or marks on the ground. He issued oral, but no written, instructions; no steps to detect and detain the vehicles could be taken as none gave clear descriptions of the vehicles; About Smti Bimala Kalita's statement that police, with the S.D.P.O. Rangia visited their house on 2.12.2000 and ordered Pratap Kalita and other members of the family to produce Khagen Kalita on 3.23.2000, failing which consequences would not be good, and accordingly the police with the S.D.P. arrived at midnight of 3.12.2000 and not finding Khagen Kalita forcibly took away Pratap Kalita, the Addl. S.P. said that those things were not stated in the FIR, and he did not know how those things could be there said before the Commission when there was no complaint at least before the civil authorities. He said that due to prevailing law and order situation frequent operations had to be undertaken by the police and the army at the relevant period of the incident. Attention of the witness being drawn to the deposition of Smti Bimala Kalita that the Rangia police with the S.D.P.U., Rangia killed her husband Shri Pratap Kalita for no other reason except that her son Shri Khagn Kalita was in the ULFA, Shri Das replied that this was not stated in the FIR. He said that there was a Govt. circular to send material exhibits of Kamrup cases to the Armourer, 4th Assam Police Battalion.

From the above evidence on record, three hypotheses seem to emerge. First, it could have been caused by some other group of ULFA in discord with Khagen Kalita, Second, it could have been by some Sulfas, and Third, it could have been by the State Police-Sulfa nexus. The first does not stand scrutiny. There has been no iota of evidence in its support. This appears to be the stock hypothesis of the police in almost all cases under inquiry. Had some other ULFA been active that way, the police would have been able to produce evidence of the same. There is no apparent reason of some imaginary ULFA to have any rift so as to feel justified to kill the father of Khagen Kalita, rather than Khagen Kalita himself. This is accordingly rejected.

The second hypothesis appears to some extent plausible. According to Smti Bimala Kalita on the midnight of 3.12. 2000 the party that entered Pratap Kalita's house comprised of a large group of persons, all, except two, were covering their faces with black cloths. some with red caps. The excepted two were police officers. Smti Bimala Kalita said that they did not allow the inmates to put on the electric lights, and they

themselves used torch lights and by that light sometimes she saw them. She saw the S.D.P.O. keenly, but recognised him also from his voice which was familiar to her. Shri Binod Kumar admitted that he had talked to Pratap Kalita and his wife several times earlier, though he did not then know her name. She said that the S.D.P.O. was Hindi-speaking, but Shri Binod Kumar said he could speak and understand Assamese. However, he admitted that while he went through the application of Bimala Kalita to the Commission, he could not fully understand the contents thereof. The covering of faces with black cloths has, in these cases, been always associated with the Sulfas. This has complicated the legal position for the reasons to be discussed shortly. None could suggest as to why Smti Bimala Kalita should have implicated policemen in her vital matter relating to the death of her husband, and when one of her sons has still been in ULFA. Shri Naren Kalita was not an eye witness to the visit of the police and Black faced party in the midnight of 3.12.2000. So the argument that the FIR lodged by Haren Kalita contained scanty information would not be material. As regards Smti Bimala Kalita herself, there was no question of her being expected to lodge any FIR during the night. In the morning she went to the P.S. and thereafter Naren Kalita lodged the FIR recorded at 11 A.M., but his statement was taken at 6 P.M. Supreme Court says the FIR need not be the encyclopaedia of the facts, as people may be under tension at that stage. Curiously enough, I.O. did not record her statement. Even Moinuddin's statement was not taken when he telephoned the information about the dead body find early morning. This might indicate that the police already knew what and where it was. However, though the Sulfa hypothesis was supported by the black faced persons' presence, it could not have been done by them alone. They would, in all probability, have been caught by police while taking away Pratap Kalita, killing him and throwing his body at Moranjan within a couple of hours after midnight. Police never examined any Sulfa till filing the final report.

The State Police-Sulfa nexus hypothesis includes all the plausibilities of Sulfa hypothesis plus those of the Executive Police Administration. It is common knowledge that the notion of secret killers has been popularly associated with the Police-Sulfa nexus, so as to raise the SULFA image to an Extra-Constitutional Authority. However, we have to base our decision on evidence on record, and not on popular notions. It is in evidence that the then Chief Minister Shri Prafulla Kumar Mahanta got appeals published in Sahitya Sabha and other Journals urging the parents and families of Ulfa members to persuade their ULFA wards to come back to the main stream, and the Police, CRPF and Army took it to be their duty to persuade the family members in that line. At a stage these forces used to forewarn the family members that their failure to do so would not be good for the families. Success in this line was somehow connected with better promotion and posting in service, and that led to some desperation. Some of the officers took resort to coercive measures. Thus in Pratap Kalita's family the police party came to his house on 2.12.2000 and made it clear that unless they produced Khagen Kalita within 24 hours, his father would be finished. Helpless Bimala and Pratap repeatedly made clear that they had no contact with their son, and they could not produce him. But words were words. At midnight of 3.12.2000, the party appeared, woke up Pratap Kalita, blind of one eye and lame of one leg, and taken away by the party. Thus, he having been last seen together with the police- black faced party, they were to explain what happened to him. Next was the killing and then throwing the body, face downwards, lying on his belly, then seen by the early Namaz goers of Chattasil Village, and telephone by Moinuddin and the G.D.

Entry No. 83 of Rangia P.S. Without the nexus with police all these could hardly appeared to have been possible. So this hypothesis may be beyond any reasonable doubt.

On the basis of the above evidence and hypothesis on record, the identification of the killers and their accomplices may reasonably be limited to the Police personnel, and the Sulfa, who visited the huse of Pratap Kalita in the midnight of 3.12.2000, and who excited, helped and/ or facilitated the commission of the killing, and the Officers and men of Kamrup District Police Administration, and oof Rangia Subdivision, including the Rangia P.S with the then O.C. and the I.O. who were concerned with the investigation of the case.

This case deserves to be revived and reinvstigated.

(C) Whether there was any conspiracy in targeting Pratap Kalita and the motive behind such killing.

This term is replied in two parts, namely, 1. Conspiracy in targeting, and 2. Motive behind such killing..

I. Conspiracy in Targeting the Victim. Conspiracy.in the context of the instant inquiry, will mean criminal conspiracy which is defined in Section 126A of IPC thus; ..

“When two or more persons agree to do or cause to be done-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code.

“ A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or persons in any conspiracy for the doing of that thing. if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, institutionally aids, by any actor illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the First Report and the same is referred to.. The question whether there was any conspiracy or not in the killing of Pratap Kalita has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that the

family members of Khagen Kalita were requested by various Govt. agencies to persuade their younger son Shri Khagen Kalita, who has been an ULFA, and were forewarned by the army, the CRPF and Police that if Khagen Kalita could not be persuaded, by them to join the peace talks and bring peace, the consequences would not be good for the family. The persons who participated in the act of actual killing on the fateful night, must have been the same or their agents and accomplices and as such, there could be no other answer than that there was criminal conspiracy in the killing of Pratap Kalita..

There is evidence to show that the SULFAs were enjoying protection from the police. This may have disabled the police from taking the right action against the SULFA in this case. Similar situation was found in case of Nalbari police sheltering SULFAs. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an Extra-Constitutional Authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of Pratap Kalita, there were a large group of persons in the act of killing, but there was a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of killing show that there must also have been some authoritative institutional assurance of safety to the killers after the act was completed. Therefore, it is held that there was conspiracy of the worst kind, being among the protectors against the victims they were bound to protect under the law; i

II. Motive behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of P.W 1 Smti Bimala Kalita that there could be no other reason for killing of her husband Pratap Kalita except for that his son Khagen Kalita was in the ULFA. This statement was not challenged in cross-examination. Therefore, there could be no doubt that forewarners were in the conspiracy .

The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. The member of the ULFA family has been executed brutally, for no fault of his, and only for his son Khagen Kalita being in the ULFA, that was, for a status offence without any sanction of law and in blatant violation of the victim's Legal, Constitutional and Human rights. Intention and motive are often used synonymously. The motive was the perpetuation of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty and dangerous propensity. In Criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material.. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as:- a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it.

(D) Pinpointing responsibility on persons involved directly or indirectly in killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt. i

The Best Evidence Rule. "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that 'the best evidence must be given of which the nature of the case permits.' has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, 'In the, present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the corpus delicti may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court'.

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this series of cases under inquiry, is therefore is relevant and admissible,

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7.2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so..The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation , accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated(in another case) about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of all the earlier cases are found in this case, while answering its terms of reference, so as to justify a finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs and their families and relatives, namely :

1. That this killing involved an ULFA family, that of the ULFA Shri Khagen Kalita..
2. As in other cases, this killing, of Pratap Kalita, was committed in the dead of night, after taking him from his home at midnight.
- 3.. The assailants, except 2 of them) covered their faces with black wrappers and red caps, to avoid being identified.
4. The weapon used in killing were firearms of prohibited bores being bores generally found in police-military situations
5. The firearms being of prohibited bores, forensic examination of the material exhibits was avoided.. Investigation fizzled out..
6. The vehicles used were never seized or taken into custody..
7. There were no police patrolling in the crime areas prior and posterior to, or during the killing.
8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an Extra-Constitutional Authority and used as the executioners. the modus operandi being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send advance team to locate and survey the house, then to send armed and masked persons to shoot them dead or take them away and kill them secretly and throw the bodies somewhere.. In this case killing was somewhere outside his house.
9. There was general resentment and decry against the Unified Command Structure/ Chief Minister..
10. There was connivance of SULFA; and omission to make any SULFA accused despite clues..
11. The investigation did not commensurate with the seriousness of the crime. ...

12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.

13. No condolence message was sent from the Govt. of Assam

14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam in this case.

15. That in all the cases of Ulfocide there is remote orchestrated death penalty having been imposed on the victims for failure to bring their ULFA wards back to main stream..

16. That from evidence of this case, as in all other ulfocide cases, "remote orchestration" of the ulfocide is deducible. These common characteristics, along with evidence, prove beyond reasonable doubt, remote orchestration of killing from "Home Ministry, through Police-SULFA nexus using some SULFAs as the striking arms or executioners. The authority may be held liable and be dealt with according to law.

This conclusion is based on the similarities of the seven cases in almost all respects which could not be so, unless there was remote orchestration from higher authorities. The remote was at Home Ministry. The "kill and get killed" applied to several SULFA leaders..

On the basis of the above evidence and hypothesis on record, the pinpointing responsibility may reasonably be on killers and their accomplices may reasonably be on the Police personnel, and the SULFAs, who visited the house of Pratap Kalita in the midnight of 3.12.2000, and forcibly took away Pratap Kalita and who excited, helped and/or facilitated the commission of the killing, and the Officers and men of Kamrup District Police Administration, and the S.D.P.O. of Rangia Subdivision, including the Rangia P.S with the then O.C. and the I.O. who were concerned with the investigation of the case.

(E) Recommendations to prevent recurrence of such killings.

What had happened in this case was cold blooded murder of Shru Pratap Kalita, father of ULFA Khagen Kalita, for the only reason of his son having been in the ULFA. In her application and in her depositions Smti Bimala Kalita specifically mentioned the names of few officers, and even said that she would be able to identify them if she was shown to her. The only argument of the officers was that nothing of the kind was stated in the FIR lodged by Shri Naren Kalita who was separate from Pratap Kalita and was not present when the Police and black faced party visited Pratap Kalita's house on the midnight of 3.12.2000, whereafter as eye witness Smti Kalita hardly had any time to lodge an FIR after seeing her husband's dead body next morning. The culprits may be dealt with according to law, of course, bearing in mind the State-wide situation prevailing then, one being almost a spoke in the wheel of the State...

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure, which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/

requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State are considered inadequate, the armed forces and para-military forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire, first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed for restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

The Army Districts. In para 15 we discussed the structure and functioning of the Unified Command Structure. In course of the Commission's hearing sessions in the Upper Assam district of Sibsagar it was learnt that the Upper Assam districts of Tinsukia, Dibrugarh, Dhemaji, North Lakhimpur and Sibsagar have been declared as Army districts and that, as a result, Army has been operating in those districts. In so far as the declaration is concerned, this Commission has nothing to do. As the Commission has to enquire into some criminal cases of some of those Upper Assam districts, the Commission has to see whether this declaration had any impact on those cases. The Commission proceeds on the basis that during the period from 1998 to 2001 also similar declaration could have been there in those districts, and the Unified Command Structure and the Armed Forces Special Powers Act were necessarily in operation in those districts. If that was so, what were the functions and powers of the Army thereunder would be relevant in the context of prevention of such killings. We have already discussed this, including the leading case, in para 15. The Armed Forces (Assam and Manipur) Special Powers Act, 1958 was amended by the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act,

1972; and it is now The Armed Forces in the State of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram Special Powers Act, and it is extended to all these North Eastern States. By section 4 of the Amendment Act 1972, section 3 of the principal Act stands substituted, namely,

"3. If in relation to any State or Union Territory to which this Act extends, the Government of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area."

The Armed Forces Special Powers Act does not enable the Armed forces to supplant or act as substitute for civil power after a declaration has been made under section 3 of the Act. The power conferred under Clause (a) of section 4 of the Act can be exercised only where any person is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or firearms; ammunitions or explosive substances. In other words, the said power is conditional upon the existence of a prohibitory order issued under a law, e.g. under the Cr.P.C. or the Arms Act, 1959. Such prohibitory orders can be issued only by the civil authorities of the State. In the absence of such a prohibitory order, the power conferred under clause (a) of section 4 cannot be exercised. Similarly, under section 5 of the Act, there is a requirement that any person who is arrested and taken into custody exercise of the power conferred by the clause (c) of section 4 of the Act shall be made over to the Officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

Maintenance of public order involves cognizance of offences, search, seizure and arrests followed by registration of reports of offences (F.I.R.s), investigation, prosecution, trial, and in the event of conviction execution of sentences. The power conferred under the Act only provide for cognition of offence, search, seizure and arrest and destruction of arms dumps and shelters and structures used in training camps or as hide-outs for armed gangs. The other functions have to be attended to by the criminal justice machinery. Thus, the functions in aid of civil power have been ruled by law and not by discretion. The deployment of the Armed forces of the Union in a State does not in any way deprive the people of the disturbed area of the State of their fundamental rights to life and liberty. Any violation of such rights under such provisions would not countenance violation of Constitutional and human rights of the people by the Forces deployed in aid of civil power, nor would it prevent fake encounters from being murders, or a crime from being a crime, punishable under the law.

Throughout evidence the official witnesses say that they kill the boys in self defence. The idea varies, and some seem to be of the view that Ulfas are to be shot at sight. Fake encounters are often reported in news papers. Almost always some obsolete weapons/ammunitions and/or some Ulfa related papers are put near the dead bodies obviously for post mortem justification of the killings. This will not stand on the way of the spade being called a spade...

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner. While no training course will be appropriate, considering their exalted position and prestige, periodical periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in

detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea, their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, but using their services as "guides, "spotters", trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the Insolvency principle is not applicable to criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the citizens was effected, and by those whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gratia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning patriarch of the family has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior

counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to Smti Bimala Kalita, widow of Pratap Kalita, for the benefit of the family, a sum of Rs 5,00,000/- (Rupees five lakhs) only...forthwith.. More than six years have already elapsed and it brooks no further delay.

—000—

K. B. Kalita

THE END.

APPENDIX - I

SHRI TRILOK VISHNU TALUKDAR

Bharakumukh P.S. Case No. 246/99

Date of occurrence 18.9.99

By the Commission's order dated 23.8.2006, on application dated 2.6.2006 submitted by Mrs Chapala Talukdar, wife of Shri Trilok Vishnu Talukdar, since deceased, was taken up for inquiry in the interest of justice, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No.PLA 331/2005/1 dated 22.8.2005, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry, with notice to the State Government. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference, and any other related and relevant matters with recommendations, if any, naaaaaaaamely,:

- “(a) Circumstances, in each case, leading to the killing of its victim(s).
 - (b) Identity of the killer(s) and accomplice(s), if any.
 - (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).
 - (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
 - (e) To make recommendations to prevent recurrence of such killing(s)
 - (f) Any other matter related to or relevant to the purpose of this inquiry;”
- “(A) Circumstances, in each case, leading to the killing of its victim(s).

In the application supported by affidavit, it was, *inter alia*, stated that “there was a pre-planned dastardly killing of a promising young business man during a late night return home after celebrating *Vishwakarma Puja* in 1999”, “in execution of a deep-rooted conspiracy” “by and at the behest of the custodians of law and justice in the State of Assam” the victim was her husband, Late Trilok Vishnu Talukdar “said to have been

killed by his own PSO, Prafulla Sarma, at Sabipul, Bilpar of Chatribari under Bharalumukh P.S. while returning from *Viswakarma Puja*." It was stated:

"Around two months before the liquidation, my husband Trilok had divulged before my eldest father-in-law Late Dinabandhu Talikdar, his beloved Bardeuta, that Shri Prafulla Kumar Mahanta, the then Chief Minister of Assam had one day summoned him and asked for Rs. ten lakhs to be given by him personally and another Rs. ninety lakhs from his other SULFA colleagues. Stunned at such requisition, my husband humbly expressed his inability to give or collect such huge funds. My late elder father-in-law Dinabandhu Talukdar secretly shared this piece of vital information to my uncle father-in-law Satya Nath Talukdar. We suspect a linkage of his murder with this as the organised murder was committed not too long thereafter".

The Commission states, that the applicant, who is none else than the widow of the victim Shri Trilok Vishnu ^{Talikdar} Sarma, has applied for withdrawal of the case from inquiry. Our worthy Secretary, Smti ~~Gima~~ Rekha Bhuyan, A.C.S. happened to meet the applicant who expressed to her that she was withdrawing the case to avoid further distress, her child being the only hope for her in life. Putting ourselves in her position, we appreciate her decision, and hence made no inquiry in the case, except recording her statement on oath regarding death of her husband, who was really a promising SULFA entrepreneur. For this, we have already issued a notice u/s/ 8B of the Act to the respondent. .



2007

Printed at the Assam Govt. Press,
Guwahati-781021